GASOLINE MARKETING SINCE DECONTROL

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ENERGY, ENVIRONMENT, AND SAFETY ISSUES AFFECTING SMALL BUSINESS

OF THE

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HOUSE OF REPRESENTATIVES

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GASOLINE MARKETING SINCE DECONTROL

WEDNESDAY, DECEMBER 1, 1982

House of Representatives,
Subcommittee on Energy, Environment, and
Safety Issues Affecting Small Business,
Committee on Small Business,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2359-A, Rayburn House Office Building, Hon. Berkley Bedell (chairman of the subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN BEDELL

Mr. Bedell. The subcommittee will come to order.

Because of the fact that we are in our lameduck session and there are a number of other meetings going on, I am not certain as to how many of our committee members will be in attendance or when they will be in attendance. However, the real purpose of these hearings, as most of you know, is really to establish a record as to what the situation is in various areas, what the problems are, and what possibly should be done about any current problems.

This morning, and again tomorrow, the Energy Subcommittee meets to consider the subject of gasoline marketing since decontrol. This is to be the first comprehensive examination of the gasoline marketplace since price and allocation controls were lifted in early 1981, and it is our purpose to provide Congress and the public with a clear picture of what has happened, what is happening, and what is likely to happen in this important and volatile sector of our economy.

For many years now the House Small Business Committee has assumed the rule of Congress watchdog over the marketing end of the petroleum industry. We recall the committee's hearings in the midseventies which focused attention on the arbitrary manner in which some oil companies dealt with their lessee dealers. Those hearings were followed by enactment of the Petroleum Marketing Practices Act.

More recently, in 1979, the committee held a series of hearings in Washington and throughout the country, looking again at gasoline marketing practices. Those hearings led eventually to the consideration of so-called divorcement legislation which would bar integrated refiners from directly marketing motor fuel to consumers.

Some see divorcement as a necessary effort to address the problems created by the unequal positions held by refiners and marketers who both compete and do business with each other. There has been extensive debate over this legislation but, despite the chairman's fondness for the concept, it is not our intent to dwell on divorcement or any other legislative proposal at this week's hearings.

These are oversight hearings. The Energy Subcommittee had not originally planned to consider any gasoline marketing issues during the lameduck session of Congress, but we were prompted to do so by the many requests we received to examine various problems that have arisen as of late. The chairman cannot recall another issue where he has been asked by so many different individuals, organizations, and other members, to hold investigative hearings.

We must start by noting the absence of useful data in the Government's hands. It seems that when the administration decontrolled gasoline marketing, they also brought to a halt all data collection systems that had been useful in monitoring and understanding trends in marketing. Our first witness today is Mr. Jan C. Lundberg. He represents the Lundberg Survey, a private organization which has earned the reputation of being a leading source of statistical information and analysis in the gasoline marketing industry. We have asked them here to help us set this hearing in perspective and to see if they can help fill in the void created by the missing Government data.

All of our other witnesses today represent various segments of the independent marketing industry: retail dealers, branded jobbers, chain marketers, and so forth. Tomorrow we will hear from a final group of wholesale marketers and from representatives of five major oil companies.

The chairman is pleased to note how many of our witnesses are personally involved in the day-to-day workings of the marketplace. Over the years, we have taken pride in our efforts to secure firsthand testimony and personal, direct observations of the business world from those who work in it, rather than from those who merely observe it from a discrete distance. We are anxious to hear from our witnesses what changes they have observed in the gasoline marketplace since decontrol, what those changes mean to them personally and to those they represent, and where they see gasoline marketing headed in the near future.

I do wish to remind all of our witnesses, however, that we are under rather tight time constraints. Consequently, we will be very firm about observing our rule that witnesses' initial oral presentations be no longer than 10 minutes in duration, to be sure we have enough time for questions and dialog. What we will do is mention, certainly, if anybody exceeds the 10 minutes of their time, so they can try to make it as short as possible.

Before we hear from our witnesses, however, I would like to place in the record a statement submitted by our ranking minority Member, Silvio O. Conte. Regrettably, Mr. Conte's duties at the Appropriations Committee prevent him from being here this morning.

[Congressman Conte's opening statement follows:]

OPENING STATEMENT OF HON. SILVIO O. CONTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. Chairman, I would like to commend the Chairman of this Subcommittee, Mr. Bedell, for his continuing commitment to the preservation of a competitive retail gasoline marketplace. For several years now, he has led a battle that was started when I was ranking Republican of the Small Business Committee. This battle between independent station owners, jobbers, and the large oil companies has taken on a new dimension since decontrol. Previously, dealers and jobbers only had to worry about price and supply when contracting with the oil companies. To name a few of the concerns since decontrol, dealers and jobbers now have to worry about price, supply, credit policies, credit card practices, market withdrawals, rent increases, and price squeezing.

As one can imagine, decontrol has greatly changed the complexion of the petroleum retail market. Small businesses have traditionally been the backbone of the petroleum retail market. Using all the standard economic theories, decontrol should increase the role of small business in the market. But this has not been the case. Since decontrol, these small, independent businessmen have been vanishing with an increasing, and may I add disturbing frequency. Some say this is the result of natural market forces. But I must admit I don't feel at all comfortable with this market concentration which is now taking place.

I hope these hearings provide us with the information Congress needs to ensure we can make prudent and proper judgments concerning the state of petroleum retail marketing today.

Thank you, Mr. Chairman.

Mr. **Bedell**. Mr. Lundberg, we would like to hear from you, if we may. We appreciate your being here with us.

TESTIMONY OF JAN C. LUNDBERG, VICE PRESIDENT, LUNDBERG SURVEY, INC.

Mr. **Lundberg**. Thank you very much, Mr. Chairman.

My purpose in appearing here today is to try to correct a longstanding misapprehension throughout our Federal Government as to what vital national petroleum products data are available, at least from the private sector.

The Department of Energy has, for years, permitted two wrongheaded impressions to be engendered simultaneously. The first one is there are not sufficient usable data as to petroleum product prices for the Nation from private sector sources. Yet the DOE subscribes to private sector data to check on the DOE's own possible reliability.

The second impression DOE engenders as an apparent policy is that it prefers to suffer a lack of certain critical data than to utilize private sector data, as if it does not care to recognize any outside competence.

The American Petroleum Institute produces entirely reliable supply data in a timely fashion. The Energy Information Administration folds the API's stocks and inventory data into their own statistical pie, but this reliance on outside data should be better known and more appreciated than it is.

There are several good sources of petroleum industry information among the trade press. Much information is available from Platt's Oilgram, the Oil Daily, and from such weekly trade letters as the Oil Buyers Guide, Oil Express, U.S. Oil Week, and Platt's Bulletin.

I intend not a single self-serving comment here today, but it should be recalled that at the very beginning of the regulated years, the Cost of Living Council utilized my company's taxable gasoline shares of the market for all 50 States and Washington, D.C. These data, which are not derived through any arbitrary methodology, are straightforward accountancy supplied by State agencies and private company submissions.

Because these share of market data are subscribed to by many oil companies, the syndicated fee per State per month is no more than $30. I mention this because DOE should not be pardoned for not subscribing to such a private and uniquely available data base because of any significant cost. For 1 month now, DOE has resumed subscribing to this data base, so I am not ventilating a grievance. For the past 30 days, after getting along without such data for years, the EIA now knows what is happening in taxable gasoline volume and demand, at least by region, though not on a State-by-State basis.

However, during those years of DOE's not taking these data into account, there were frequent mistakes in construing real world developments. That is because the DOE's mandated information measures only primary storage demand changes. Even that measure, however, omits to include much imported and then independently blended stocks, which do however find their way into our taxable reports. For example, the EIA voiced a notion a few months ago that gasoline demand for June was on the upswing. EIA was wrong. Taxable sales showed instead a 1.6 percent drop in demand. As for our company's diesel fuel monthly reports, EIA lacks information as to that data base of taxable sales volume.

Failing to utilize such national data, the EIA cannot help in the coordination of Federal information, where the President and our Transportation Secretary pinch-hit a supposition that a projected 5-cent Federal tax increase works out at $30 annual expense to the average motorist, on an assumption of 600 gallons consumed annually per motorist, which was the case back in 1980. Instead, on the basis of onroad taxable consumption, the figure for 1983 would be $23.95.

Again, a lack of solid contemporary information at the DOE stands in the way of correct coordination of intelligence among the Department of Transportation, the Office of Management and Budget, and our legislative factfinders. The DOE could have prevented the Federal Government from calculating a $5.5 billion revenue figure from the prospective tax increase, when the 5-cent tax increase would bring $5.7 billion. Meanwhile, also left out of public appreciation is another $1 billion in additional higher user taxes possibly to be added based upon statements by DOT Secretary Drew Lewis.

I have brought with me a copy of our Lundberg Letter of last Friday which corrected the miscalculation of what motorists would have to pay on the 5-cent increase as well as the reasoning behind the likelihood of not $5.5 billion, but $6.7 billion in anticipate revenue.

The DOE utilizes a limited recap of my company's sole source supply of national retail and wholesale prices and dealer margin surveys that are produced every 2 weeks, based upon a nationwide sample of 18,000-plus motorfuel outlets, delivered to the petroleum industry and to the EIA 24 hours after processing. The EIA utilizes PAD district and DOE regional summaries of our retail data.

The petroleum industry has utilized our detailed market-by-market surveys for over 25 years, but the DOE aims unendingly to replicate actual marketplace data through mandatory questionnaires, which have in the past suffered from inherent flaws in reporting formats and in almost unbelievable delays before the data can be published.

A curiosity of present time is that the DOE has not anticipated the wholesale distributors' problems which have, in effect, led to a meeting such as this, the substance of which has seized the consideration of this committee. The DOE was certainly aware that the President had decontrolled gasoline. This should have been the signal to the DOE to evaluate what could happen to dealers and jobbers the country over, with oil companies returning to the free market and allocating to whomever they please, at whatever prices they care to nominate. No; it was left to the private sector to try to point up trends of vital changes taking place in distribution logistics.

I have also brought for you the November 19, 1982 Lundberg Letter on conditions since decontrol affecting jobbers and their margins.

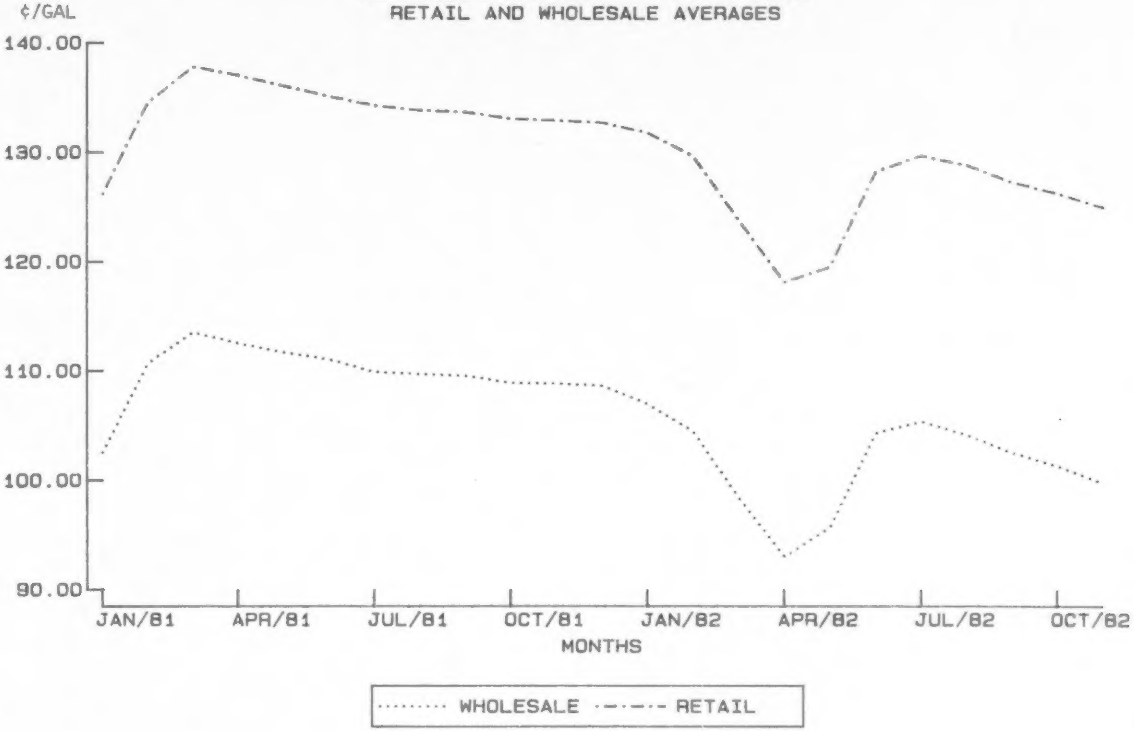
Also attached is a graph of retail and wholesale weighted average gasoline prices from January 1981 to November 1982. Net decreases are shown, and if inflation were to be factored in, the drops would be substantial. Dealer margins have, on average, not enjoyed improvement. While our share of market and wholesale fuel surveys of all classes of trade of 170 markets show no actual shortages or supply embarrassment to rural communities, pullouts and distribution reorganizations have accelerated over the last year. Such oil company developments are a result of each one pursuing its own profit motive and drive for higher productivity. Our jobber calculations show a reduced margin position. Since many oil companies find it unprofitable to serve certain regions, how well jobbers are able to carry on depends upon their continued viability.

The oil companies, due to national antitrust policy, are unable to meet with one another to deal with rural area vulnerability to possible supply disruptions. In the same way, they cannot parcel out to one another the Nation's remaining independent jobbers, who are so often left to cope with logistics problems. The President of the United States could easily bring about a temporary suspension of the antitrust laws, so as to permit a national conference of the entire petroleum products distribution system. Such a conclave, attended by all interested elements of Government and the media, could bring to light present problems that result mostly from inhibited communications. It might also bring to light new thinking to cope with the present intensive evolutionary forces. It would certainly bring to light the basic good will and individual and corporate responsibility that I think are growingly characteristic of the whole oil industry.

Thank you.

[The submissions of Mr. Lundberg, which were referred to above, follow:]

U.S. GASOLINE PRICE SUMMARY
ALL GRADES AND FULL + SELF SERVICE
RETAIL AND WHOLESALE AVERAGES



SOURCE: LUNDBERG SURVEY, INC.
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LUNDBERG LETTER

Weekly Vital Statistics and
Analysis in Oil Marketing

Published Fridays

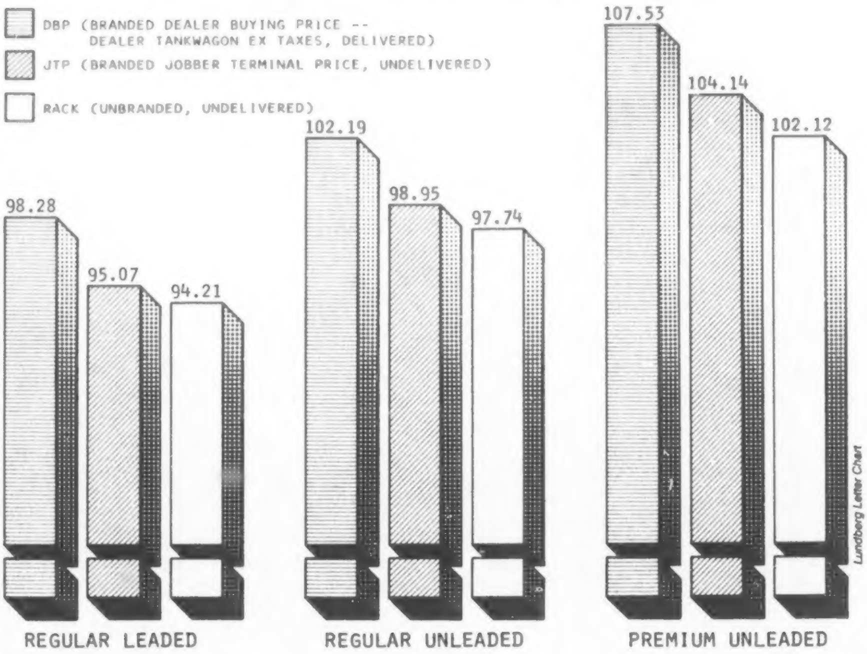
VOLUME X NUMBER 3

NOVEMBER 19, 1982

Changing Wholesale Gasoline Price Structures

THE NEW LOOK IN JOBBER MARGINS

THREE WHOLESALE GASOLINE PRICE LEVELS: DBP, JTP AND RACK
U.S. AVERAGES, CENTS GAL., NOVEMBER 16, 1982



Source: Lundberg Survey, Inc.

WHAT ARE JOBBER MARGINS TODAY? Wholesale gasoline pricing is in a state of shakeout, with the traditional jobber discount (off dealer tankwagon) and hauling allowances drying up. Will the difference between the jobber terminal price, and the price branded dealers pay for delivered product, enable jobbers to continue supplying rural, commercial, agricultural, and service station accounts where alternative sources of supply exist?

Trilby Lundberg, Editor Dan Lundberg, Publisher
Contributing Editors, John Ayling, Mark Emond, Jan C. Lundberg Harold I. Ash, Statistics Chiu Shaw, Graphics Netta B. Shelton, Business Manager Craig P. Hardin, Production

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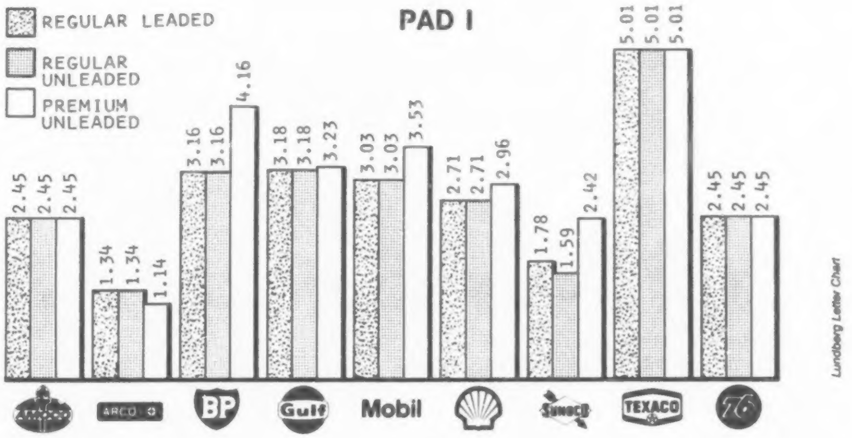
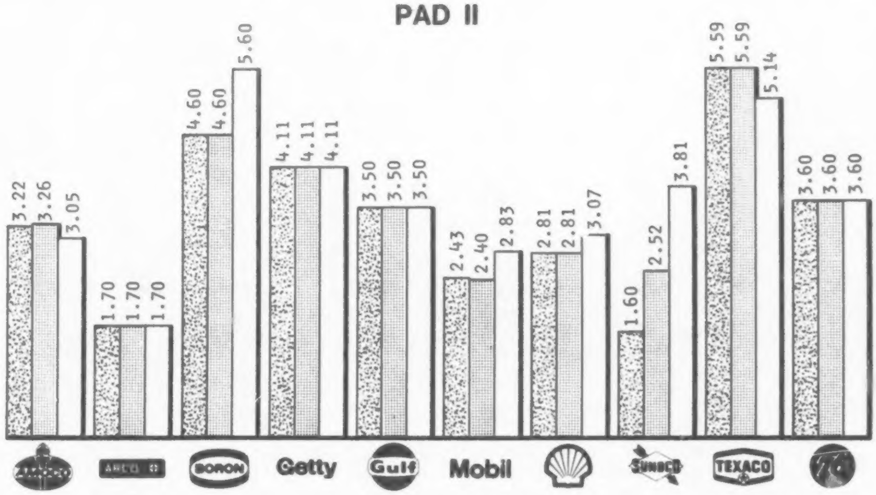
THE DBP-JTP* DIFFERENTIAL

AVERAGES REFLECT CITIES WHERE MAJORS SELL GASOLINE AT BOTH PRICES
CENTS GAL., NOVEMBER 16, 1982





**DBP = Dealer Buying Price (Dealer Tankwagon ex taxes); JTP = Jobber Terminal Price.*

Changing Wholesale Gasoline Price Structures

THE NEW LOOK IN JOBBER MARGINS

TWO TRADITIONAL ELEMENTS in gasoline jobbers' margins are to a great degree being withdrawn from wholesale price policies of major suppliers. The old discount off Dealer Tankwagon (DTW), and the hauling allowance, are being structured out. Something else, something that branded distributors can count on as the staple upon which to build future profit margins, is being structured in.

That something is identified by the process of elimination.

Independent distributors carrying the brand name of their major suppliers continue to bring fuel supplies to urban and rural accounts in commerce, small industry, agriculture, and retail service stations where majors cannot do so efficiently and economically. The performing of this vital service, while seemingly not threatened by major oil company pullouts from many parts of the country over the last few years, is vulnerable to emerging wholesale price policies. Jobbers warn that many of their consumers could be left high and dry if jobbers cannot look forward to stable and profitable relationships with major suppliers.

Jobber margins often had three elements guaranteed: the jobber discount, the value of product delivery, and the markup to end users. For years, jobbers could count on a structured discount off the Dealer Buying Price (DTW, ex taxes). This Jobber Buying Price was either for product delivered, or, if not, adjusted with a compensatory hauling allowance so the jobber could deliver product to markets where such competitive edge was required to maintain share of market for the major.

This report does not attempt to quantify the jobber markup, which is comprised of so many variations by customer class and, if the jobber is also a retailer, variables in economy-of-scale. What we are quantifying is the terminal price edge for branded jobbers over the dealer buying price for branded dealers.

The DBP-JTP Differential

Terminal pricing has been cited as the wave of the future. It's already quite widespread. In a canvass of major brand wholesale pricing structures across the country, we found that out of 185 markets, 110 had this in common: major oil companies are supplying their lease dealers directly, and selling gasoline to jobbers at the terminal, at a branded, but undelivered, price.

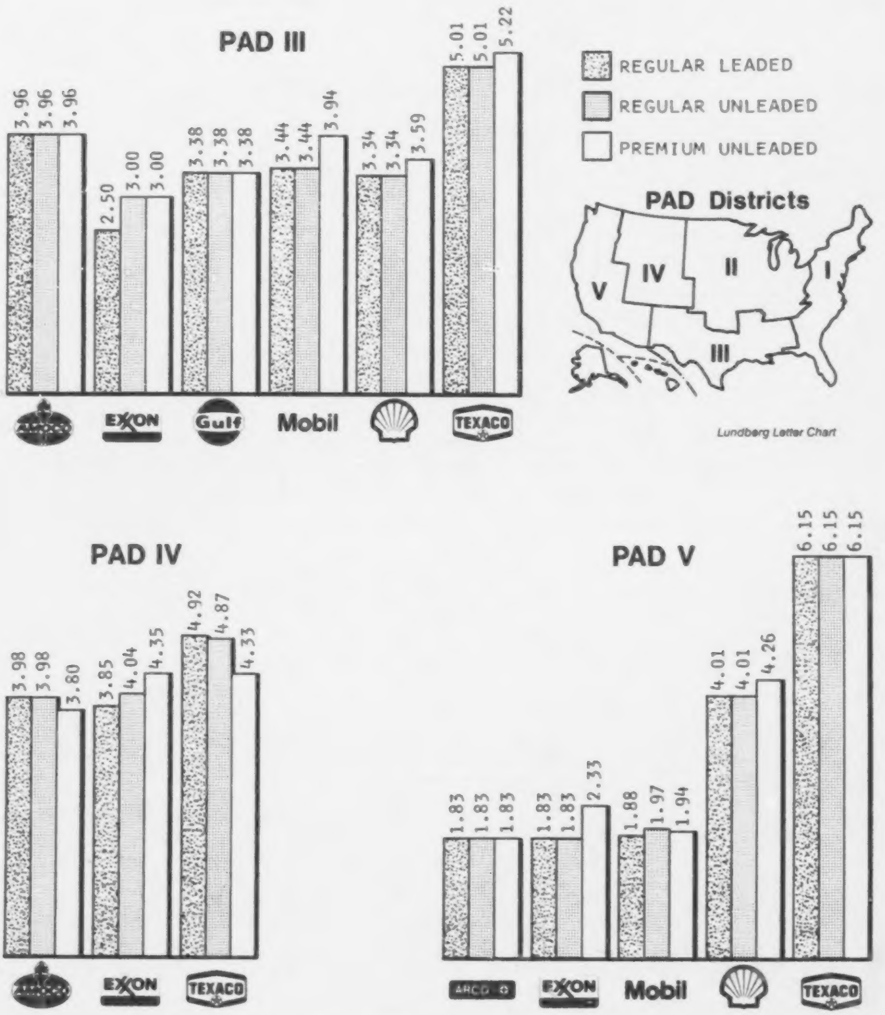
While various major oil companies state that DBP is not a reference point from which to derive a jobber discount, and state that, in fact, their jobbers mainly serve outlying areas and therefore have no competitive connection with the their direct dealer operations, this differential is the only thing left jobbers can look to as a reference point -- if they serve the same markets that are supplied by direct dealers associated with the same major oil company.

This differential, while not the jobber margin, is a chunk of it. In some cases, where competition is eroding the jobber's product markup, it may actually be the margin! The front cover graph shows where the average U.S. JTP sits under the average DBP -- and how average rack sits below the JTP, just 0.86¢ gal. away for regular leaded.

THE DBP-JTP* DIFFERENTIAL

AVERAGES REFLECT CITIES WHERE MAJORS SELL GASOLINE AT BOTH PRICES

CENTS GAL., NOVEMBER 16, 1982



*DBP = Dealer Buying Price (Dealer Tankwagon ex taxes); JTP = Jobber Terminal Price.

What isn't shown on the front cover is the average branded jobber delivered price for gasoline, known as the JBP (jobber buying price). It's a disappearing fixture, with few such prices posted by majors in our survey of 185 cities and it actually came out higher than JTP. The few citings are from the entire sample, not matched to the DBP-JTP samples. For the record, here are U.S. average delivered prices to jobbers:

U.S. Average JBP by Grade, Nov. 16, 1982

regular leaded:	94.34¢ gal.
regular unleaded:	98.30¢ gal.
premium unleaded:	103.35¢ gal.

Searching for Universals

To see how major oil companies are manifesting new wholesale pricing policies with regard to terminal pricing for their jobbers, see the charts on pages 2 and 4. Each PAD District chart shows the average price differences by grade between the Dealer Buying Price and the Jobber Terminal Price, for those majors that have both in our city samples. PAD I has nine company averages for the cities where each major has both price stuctures in action. PAD II has 10 such company averages; PAD III has six; IV just three; and V has five.

The greater differences that Texaco averages show, compared to almost all other brands in all PADs, may be due in part to that company's having eliminated hauling allowances across the board. However, some other company averages contain few cities where hauling allowances are common. It could be tempting to compare differentials by brand based on whether a hauling allowance were present; but the variations in existing hauling allowances (see LL 6/04/82) prohibit coming up with any realistic average haul value for either regions or brands.

The differential for premium unleaded gasoline is frequently greater than for regular grades.

(In the course of our research we noted many jobber terminal prices for diesel available from major suppliers that didn't have terminal prices for any grade of gasoline. These were, notably, at Exxon, Mobil, Union, and Amoco terminals.)

Regional averages narrow the picture of DBP-JTP differentials: The entire range of grades by PAD District lies between 2.90¢ gal. and 4.27¢ gal. The table below shows average DBP-JTP differentials by PAD District, for three grades of gasoline.

DBP-JTP Differentials by PAD District, Cents. Gal., Nov. 16, 1982

	I	II	III	IV	V
Regular Leaded	2.92	3.29	3.54	4.25	3.23
Regular Unleaded	2.90	3.38	3.68	4.27	3.25
Premium Unleaded	3.12	3.56	3.80	4.06	3.38

Meanwhile, the national average differentials between DBPs and JTPs create an even tighter picture: they are between 3 and 3.5 cents per gallon for all three grades:

U.S. Average DBP-JTP Differential, Nov. 16, 1982

regular leaded: 3.21¢ gal.
regular unleaded: 3.24¢ gal.
premium unleaded: 3.39¢ gal.

Where the Competition Is

The effects of terminal pricing on jobbers, now that the traditional discount off DTW and the hauling allowances are no longer to be counted on, may be an important reason why some jobbers are now pulling product from as many as a dozen different suppliers. In playing the field, which many say is a defensive action against supplier pullouts and new wholesale pricing priorities of suppliers, they can "ride the toboggan down" with those known to drop price quickly under pressure, "then ride up with those that drag their feet restoring prices," as one multi-brander put it.

Many a major oil company source consulted was quick to point out that jobber terminal prices have nothing to do with dealer buying prices, because jobbers generally haul product to outlying areas, away from urban retail markets.

But jobbers supplying to retail, either through lease dealerships or direct jobber-owned service station businesses, are seriously impacted by the proximity of their buying prices to those their suppliers give their direct-supplied lease dealers and major-owned stations operated by salaried personnel. This depends, of course, on the extent of retail territory overlap.

The real competition, majors note, is between jobber terminal prices themselves.

It's not so simple: The shakeout of hauling allowances, fine tuning them, eliminating them, and making exceptions to emerging freight cost policies, makes each jobber evaluate the specifics of each wholesale price structure for each market, on a terminal-by-terminal basis. And each supplier tunes the emerging structures according to the economic attractiveness of jobber services for each area.

Market specifics continue to make it difficult to detect universal principles at work in terminal pricing. But it stands to reason that the newly quantified differential between the branded, undelivered jobber terminal price for gasoline -- and supplier- branded, delivered dealer buying price -- has largely replaced the old discount off DTW that so many majors say is no longer justified. This differential is the staple diet jobbers increasingly must live on. It's basic to the jobber margin. And it's under 3.5¢ gal. for the nation.

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LUNDBERG DEALER BUYING PRICE (DTW, EX ALL TAXES), AND RACK REPORT

PRICES OF: 11/19/82

THESE PRICES ARE OFFERED AS RELIABLE STATISTICAL GUIDELINES, NOT WARRANTED AS ACCURATE FOR PRICING DECISIONS. ALL PRICES EX-TAXES.

AVERAGE BY CITY		REGULAR LEADED PRICE	CHANGE	REGULAR UNLEADED PRICE	CHANGE	PREMIUM LEADED PRICE	CHANGE	PREMIUM UNLEADED PRICE	CHANGE	DIESEL NO. 2 PRICE	CHANGE
ABILENE, TX	DBP	99.06		103.06				107.38			
	RACK	94.00	- .50	97.50	- .50			102.50		95.25	- .50
AKRON, OH	DBP	97.39	- .21	101.34	- .21			106.41	- .21		
	RACK	93.75	- .35	97.50	- .35			101.75	- .35	99.50	- .75
ALBANY, NY	DBP	100.69		104.46				109.51			
	RACK	96.18	- .50	99.84	- .67			105.08	- .50	103.24	-1.30
ALBUQUERQUE, NM	DBP	100.44	- .36	104.44	- .36	106.90		109.56	- .45	97.30	
	RACK	96.40	- .60	100.10	- .80	103.99	- .50	104.75	- .74	94.15	+ .75
ALLENTOWN, PA	DBP	95.31		99.16				104.50			
	RACK										
ANCHORAGE, AK	DBP	105.67	- .30	109.50	- .30	117.40		115.70			
	RACK	107.85		112.85				116.85			
ATLANTA, GA	DBP	97.84	- .22	101.84	- .22			107.07	- .22		
	RACK	93.76	- .38	97.11	- .46			101.44	- .32	98.88	-1.23
BAKERSFIELD, CA	DBP	96.18	-1.00	99.80	- .86	109.05		105.27	-1.00	102.28	+ .50
	RACK	94.26	-1.11	97.84	-1.10	101.22	- .84	101.17	-1.05	95.50	- .38
BALTIMORE, MD	DBP	94.50	- .45	98.40	- .45			103.66	- .40		
	RACK	92.58	- .54	96.16	- .63			100.18	- .53	100.34	-1.15
BANGOR, ME	DBP	100.65	- .45	104.65	- .45			109.60	- .34		
	RACK	98.05	- .50	101.55	- .50			106.25	- .50	104.65	-1.00
BAY CITY, MI	DBP	97.73	- .38	101.63	- .38			107.18	- .38		
	RACK	94.78	- .17	98.12	- .16			104.50	- .13	100.25	+ .25
BILLINGS, MT	DBP	98.03	- .33	101.87	- .33	103.00		107.37	- .33		
	RACK	96.03	- .30	100.03	- .30			103.85	- .25	96.22	- .13
BINGHAMTON, NY	DBP	100.38		104.14				109.60			
	RACK	97.12	- .16	100.70	- .17			106.20	- .17	106.30	
BIRMINGHAM, AL	DBP	97.99	- .31	101.99	- .31	104.50		107.20	- .36	101.30	
	RACK	93.20	- .48	96.53	- .63			100.91	- .48	98.28	- .67
BISMARK, ND	DBP	102.20		106.20				111.70			
	RACK										
BOISE, ID	DBP	103.33	- .14	107.16	- .14	109.48		111.53		99.50	
	RACK	99.02	+ .14	102.95	+ .14	113.98	+1.78			95.78	
BOSTON, MA	DBP	98.01	- .46	101.88	- .55	106.40	-1.00	107.08	- .51		
	RACK	95.81	- .43	99.39	- .57			104.06	- .36	104.25	- .67
BRATTLEBORO, VT	DBP	100.70		104.70				109.70			
	RACK										
BRONX, NY	DBP	101.34	- .31	105.41	- .31			111.03	- .36		
	RACK										
BUFFALO, NY	DBP	99.48	- .20	103.20	- .20			108.35	- .20		
	RACK	97.43	- .25	101.43	- .25			105.93	- .25	105.00	-1.00
BURLINGTON, VT	DBP	103.53		107.38				112.26			
	RACK	101.80		104.80				109.80			
CASPER, WY	DBP	101.51		105.41		107.80		111.38			
	RACK	97.77	- .14	101.47	- .34					95.60	+ .20
CHARLESTON, SC	DBP	98.54	- .31	102.54	- .31			107.82	- .31		
	RACK	94.25	- .44	97.75	- .52			102.27	- .38	98.78	-1.14
CHARLESTON, WV	DBP	97.75		101.65				106.73			
	RACK	96.50	- .50	100.00	- .50			104.50	- .50	100.50	-2.00
CHARLOTTE, NC	DBP	98.07	- .19	102.03	- .19	104.40		107.29	- .21		
	RACK	93.55	- .48	96.88	- .60			101.19	- .41	98.87	-1.38
CHATTANOOGA, TN	DBP	98.73	- .17	102.73	- .17			108.07	- .17		
	RACK	93.50	- .55	96.81	- .70			101.44	- .52	98.14	- .66
CHICAGO, IL	DBP	97.50	- .19	101.31	- .19			106.56	- .14		
	RACK	93.63	- .11	97.13	- .16	98.50		101.09	- .09	98.42	- .45
CHEYENNE, WY	DBP	101.77	- .08	105.68	- .08	108.80		111.31			
	RACK	96.90	- .54	100.57	- .62					95.49	+ .23
CINCINNATI, OH	DBP	97.57	- .21	101.53	- .21	104.60	- .40	106.69	- .21	105.80	
	RACK	94.26	- .27	97.66	- .32			102.18	- .33	99.82	- .25
CLEVELAND, OH	DBP	97.73	- .25	101.66	- .25			106.74	- .23	105.80	
	RACK	94.11	- .32	97.78	- .31			101.83	- .27	99.91	- .50
COLORADO SPRINGS	DBP	100.28	- .42	104.03	- .42			109.12	- .42		
	RACK	95.98	- .62	99.10	- .63			103.70	- .50	95.20	
COLUMBUS, OH	DBP	97.00	- .17	100.93	- .17			106.02	- .17		
	RACK	93.94	- .23	97.60	- .24			101.94	- .23	99.40	- .33
COUNCIL BLUFFS, IA	DBP	100.22	- .30	103.92	- .30			108.00	- .25		
	RACK	95.15	- .73	98.65	- .98			103.10	- .65	98.85	- .15
CUMBERLAND, MD	DBP	95.30	- .45	99.23	- .45			106.73	- .45		
	RACK	94.00	- .40	98.00	- .40			102.00	- .40	100.00	-4.00
DALLAS, TX	DBP	96.32	- .25	100.19	- .25			105.04	- .29		
	RACK	92.47	- .41	95.81	- .46			100.10	- .30	97.39	- .48
DAVENPORT, IA	DBP	100.00	- .70	103.90	- .70			108.50	- .88		
	RACK	95.25	- .26	98.42	- .25			102.00	- .39	97.75	-1.25

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PRICES OF: 11/19/82

AVERAGE BY CITY		REGULAR				PREMIUM				DIESEL NO. 2	
		LEADED		UNLEADED		LEADED		UNLEADED			
		PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE
DAYTON, OH	DBP	97.26	- .21	101.21	- .21			106.28	- .21		
	RACK	93.88	- .22	97.63	- .22			101.63	- .22	99.10	- .50
DECATUR, IL	DBP	98.68	- .23	102.68	- .23			107.93	- .23		
	RACK	93.62	- .26	96.87	- .39			101.14	- .25	98.47	- .41
DENVER, CO	DBP	99.93	- .36	103.71	- .36	106.20		108.72	- .42	98.70	
	RACK	95.17	- .72	98.20	- .83	114.45	+1.25	102.56	- .74	94.90	+ .14
DES MOINES, IA	DBP	100.61	- .46	104.33	- .46			108.51	- .69		
	RACK	95.38	- .60	98.75	- .67			102.71	- .60	98.84	- .94
DETROIT, MI	DBP	96.51	- .56	100.46	- .54			105.77	- .54		
	RACK	93.44	- .20	96.94	- .20			102.77		99.86	+ .14
DULUTH, MN	DBP	101.57	- .50	105.40	- .50			110.57	- .50		
	RACK	95.40	- .48	98.73	- .82	102.70	- .45			98.58	- .17
EL DORADO, AR	DBP	97.30		101.30				106.30			
	RACK	93.15	- .35	96.65	- .35			100.47	- .37	97.46	- .40
EL PASO, TX	DBP	98.56	- .13	102.50	- .13	104.20		107.30	- .20	95.15	
	RACK	94.65	- .20	98.55	- .20			103.00		94.05	+ .80
EUGENE, OR	DBP	94.71	-1.18	97.71	-1.01	102.20		103.88	-1.18		
	RACK	92.88	-1.11	96.29	-1.29			101.01	-1.18	97.35	
EVANSVILLE, IN	DBP	97.95		101.95				107.45			
	RACK	93.18	- .25	96.68	- .25			100.93	- .25	100.11	
FAIRFAX, VA	DBP	94.77	- .31	98.59	- .31			103.93	- .31		
	RACK	93.95	- .55	97.45	- .55			101.63	- .52	101.45	- .18
FARGO, ND	DBP	101.50	- .60	105.50	- .60			111.00	- .60		
	RACK	96.93	- .75	100.27	- .91			104.95	- .50	101.10	- .20
FRESNO, CA	DBP	96.52	-1.62	100.09	-1.39	107.55	-1.00	105.60	-1.62	101.40	+1.00
	RACK	95.13	- .75	98.75	- .75	100.75	-1.75	103.00	- .56	96.30	
FT COLLINS, CO	DBP	100.61	- .30	104.31	- .30			109.41	- .30		
	RACK	95.50	-1.45	98.50	-1.45			103.50	-1.45	96.25	
GLASSBORO, NJ	DBP	95.26	- .09	99.21	- .09			104.55	- .09		
	RACK	96.00		101.00				105.50		103.00	
GREELEY, CO	DBP	100.45	- .42	104.20	- .42			109.28	- .42		
	RACK	95.50	-1.45	98.50	-1.45			103.50	-1.45		
GREEN BAY, WI	DBP	99.10	- .17	103.10	- .17			108.43	- .17		
	RACK	93.75	- .31	97.00	- .44			102.46	- .13	99.07	- .29
GREENSBORO, NC	DBP	98.02	- .14	101.96	- .14			107.32	- .14		
	RACK	93.65	- .33	96.96	- .41			101.32	- .34	98.63	-1.71
GREENVILLE, MS	DBP	97.65	- .85	101.65	- .85			106.65	- .85		
	RACK	93.45	- .35	96.83	- .35			101.60	- .13	97.14	- .25
HARRISBURG, PA	DBP	95.31		99.14				104.46			
	RACK	93.85		97.35						102.93	- .60
HARTFORD, CT.	DBP	98.07	- .16	101.92	- .16			107.07	- .18		
	RACK									101.75	-1.25
HONOLULU, HI	DBP	102.78	- .25	106.56	- .20	110.71	- .20	111.65	- .25		
	RACK	97.30		101.30		104.80		105.80			
HOUSTON, TX	DBP	94.62	- .43	98.51	- .43	100.25	- .75	103.78	- .43		
	RACK	90.89	- .59	94.19	- .66			98.67	- .56	97.02	- .71
INDIANAPOLIS, IN	DBP	97.39	- .21	101.33	- .21	104.00		106.57	- .21		
	RACK	93.32	- .27	96.99	- .26	98.50		100.97	- .40	100.26	- .20
JACKSON, MS	DBP	98.82	- .15	102.82	- .15	105.30		108.06	- .17	106.50	
	RACK	93.75	- .33	97.08	- .34			102.75		96.82	- .34
JACKSONVILLE, FL	DBP	98.55	- .13	102.55	- .13			107.73	- .13		
	RACK	94.64	- .31	98.14	- .41			102.36	- .31	100.16	- .25
JEFFERSON CITY, MO	DBP	99.60		103.60				109.10			
	RACK	91.75	- .50	95.25	- .50					96.25	-1.25
KANSAS CITY, MO	DBP	98.88	- .27	102.71	- .27			107.83	- .27		
	RACK	94.15	- .62	97.54	- .68			101.95	- .61	97.95	- .91
KINGS, NY	DBP	100.44	- .36	104.53	- .39			110.14	- .39		
	RACK										
KLAMATH FALLS, OR	DBP	97.36	-1.40	100.64	-1.17	106.50		106.66	-1.40		
	RACK	93.98	- .25	97.23	- .25			101.98	- .25		
KNOXVILLE, TN	DBP	98.56	- .10	102.56	- .10			107.84	- .10		
	RACK	93.69	- .50	97.02	- .64			101.42	- .50	98.47	- .47
LAKE CHARLES, LA	DBP	98.26	- .10	102.26	- .10			107.66	- .10		
	RACK	92.35	- .43	95.85	- .43			100.25	- .25	96.93	- .34
LAS VEGAS, NV	DBP	97.81	-1.43	101.37	-1.25	107.50		106.78	-1.43	100.70	+1.00
	RACK	95.64	- .58	99.14	- .58	100.88	-1.37	103.40	- .58	95.94	- .87
LEBANON, NH.	DBP	100.40	- .43	104.40	- .43			109.40	- .43		
	RACK										
LITTLE ROCK, AR	DBP	96.87	- .40	100.87	- .40			105.87	- .40		
	RACK	93.27	- .40	96.77	- .40			100.84	- .33	97.73	- .33
LONG ISLAND, N.Y.	DBP	99.41	- .35	103.37	- .28	107.10		108.66	- .39		
	RACK	95.96	- .45	99.46	- .65			104.30	- .31	102.96	-1.20
LOS ANGELES, CA	DBP	93.97	-1.62	97.47	-1.53	105.00	-1.00	103.05	-1.62	99.90	
	RACK	90.64	-2.06	94.18	-2.06	97.30	-1.78	98.46	-2.88	94.48	- .84

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LOUISVILLE, KY	DBP	98.06	- .62	101.93	- .62			107.02	- .62	107.10	
	RACK	93.49	- .25	97.12	- .25			101.37	- .25	99.56	- .25
MACON, GA	DBP	97.93		101.93				107.26			
	RACK	93.63	- .51	96.85	- .65			101.29	- .52	98.29	-1.20
MADISON, WI	DBP	98.73	- .17	102.73	- .17			108.07	- .17		
	RACK	93.84	- .36	97.00	- .53			102.25		97.71	- .26
MANCHESTER, NH	DBP	99.28	- .20	103.17	- .20			108.03	- .23		
	RACK										
MEMPHIS, TN	DBP	98.28	- .19	102.28	- .19			107.51	- .19		
	RACK	93.23	- .63	96.66	- .70			101.05	- .76	98.01	- .35
MERIDIAN, MS	DBP	98.25	- .18	102.25	- .18			107.25	- .18		
	RACK	93.52	- .32	97.02	- .32			101.20	- .33	98.65	- .25
MIAMI, FL	DBP	98.46	- .16	102.42	- .16			107.70	- .16		
	RACK	94.07	- .40	97.43	- .46			101.92	- .35	99.74	- .10
MILWAUKEE, WI	DBP	98.58	- .44	102.29	- .44			107.54	- .47		
	RACK	94.12	- .19	97.80	- .26			102.01	- .16	99.56	- .42
MINNEAPOLIS, MN	DBP	100.49	- .43	104.41	- .43			109.69	- .38		
	RACK	95.87	- .65	99.37	- .65	102.70	- .45	102.84	- .65	99.53	- .75
MOBILE, AL	DBP	97.33	- .33	101.33	- .33			106.33	- .33		
	RACK	93.09	- .15	96.40	- .21			101.07	- .17	97.79	- .12
MONTGOMERY, AL	DBP	97.60	- .25	101.60	- .25			106.60	- .25		
	RACK	93.72	- .40	96.93	- .54			101.32	- .37	98.34	- .47
MUSKEGON, MI	DBP	97.58	- .48	101.48	- .48			107.03	- .48		
	RACK	93.93	- .25	97.18	- .50			103.43	- .25	99.13	
NASHVILLE, TN	DBP	98.29	- .24	102.29	- .24			107.29	- .24		
	RACK	94.05	- .23	97.51	- .31			101.30	- .24	99.25	- .39
NEW HAVEN, CT	DBP	98.16	- .38	102.04	- .38	105.40		107.31	- .41		
	RACK	95.54	- .25	98.91	- .38			103.30	- .33	101.75	-1.25
NEW LONDON, CT	DBP	97.99	- .20	101.94	- .20			107.34	- .20		
	RACK										
NEW ORLEANS, LA	DBP	97.09	- .53	101.03	- .53			106.24	- .53		
	RACK	93.20	- .26	96.54	- .42			100.73	- .15	98.23	- .34
NEW YORK, NY	DBP	101.28	- .31	105.46	- .34			111.01	- .39		
	RACK										
NEWARK, NJ	DBP	98.70		102.57				107.87			
	RACK	94.67	- .30	97.97	- .40			102.27	- .30	101.48	-1.40
NEWBURGH, NY	DBP	101.09	- .06	105.02	- .06			110.46			
	RACK										
NORFOLK, VA	DBP	96.83	- .26	100.70	- .26			105.95	- .26		
	RACK	94.02	- .29	97.34	- .38			101.67	- .33	99.88	- .76
NORTH AUGUSTA, SC	DBP	99.30		103.30				108.97			
	RACK	93.35	- .44	96.72	- .50			100.90	- .43	98.61	-1.13
OKLAHOMA CITY, OK	DBP	98.69	- .21	102.60	- .21			107.65	- .25		
	RACK	93.87	- .40	97.18	- .50			101.44	- .55	97.20	- .73
OLYMPIA, WA	DBP	93.75	-1.47	97.21	-1.26	103.50		103.00	-1.47		
	RACK	93.93		97.18				101.93			
OMAHA, NE	DBP	100.13	- .73	103.88	- .73			108.18	- .83		
	RACK	95.37	- .75	98.65	- .75			101.60	- .63	98.20	-1.13
ORLANDO, FL	DBP	98.84	- .20	102.79	- .20			108.11	- .20		
	RACK	95.47	- .30	98.97	- .30			103.47	- .30	99.68	- .50
PALM SPRINGS, CA	DBP	96.03	-1.62	99.67	-1.53	108.00	-1.00	105.12	-1.62		
	RACK	93.58	-1.50	96.83	-1.50			101.58	-1.50		
PASCO, WA	DBP	99.16	- .75	102.66	- .75			107.48	-1.00	101.70	
	RACK	95.44	- .87	98.81	-1.13			103.75	- .83	98.25	- .13
PEORIA, IL	DBP	98.97	- .57	102.97	- .57			108.30	- .57		
	RACK	95.00		98.50				103.00		98.00	
PHILADELPHIA, PA	DBP	92.87	- .14	96.71	- .14	100.40		102.02	- .16		
	RACK	93.16	- .63	96.99	- .64			101.45	- .50	103.36	- .17
PHOENIX, AZ	DBP	93.19	- .49	97.31	- .60			102.12	- .63	101.60	+1.00
	RACK	92.81	- .43	96.10	- .57	100.38	- .25	100.65	- .16	96.65	- .40
PITTSBURGH, PA	DBP	95.75	- .13	99.55	- .13			104.86	- .13		
	RACK	94.98		98.78				104.60		101.44	- .25
PORTLAND, ME	DBP	99.59	- .34	103.48	- .53			108.47	- .60		
	RACK	96.33	- .50	100.00	- .52			104.77	- .70	102.89	-1.00
PORTLAND, OR	DBP	93.61	-1.47	96.87	-1.26	103.40		102.70	-1.47	102.70	+1.00
	RACK	92.43	- .56	95.77	- .77	105.00		100.73	- .81	96.46	
PROVIDENCE, RI	DBP	97.17	- .11	100.99	- .11			106.21	- .13		
	RACK	94.15	- .17	97.79	- .16			101.35		106.90	
QUEENS, NY	DBP	100.79	- .36	104.99	- .39			110.57	- .44		
	RACK										
RAPID CITY, SD	DBP	102.65		106.65				111.98			
	RACK	97.68	- .85	101.68	- .85			105.00	-1.20	95.10	
RENO/SPARKS, NV	DBP	99.83	-1.25	103.36	-1.07	109.50		108.92	-1.25	102.08	+ .50
	RACK	98.76	-1.17	102.26	-1.17	102.30	- .38	105.15	- .25	97.38	- .50

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LUNDBERG DEALER BUYING PRICE (DTW, EX ALL TAXES), AND RACK REPORT

PRICES OF: 11/19/82

		R E G U L A R				P R E M I U M				DIESEL NO. 2	
		LEADED		UNLEADED		LEADED		UNLEADED			
AVERAGE BY CITY		PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE
RICHMOND, VA	DBP	97.05	- .28	100.87	- .28			106.21	- .28		
	RACK	93.65	- .40	96.83	- .54			101.18	- .41	99.95	- .87
ROANOKE, VA	DBP	97.28	- .27	101.13	- .27			106.43	- .27		
	RACK	94.39	- .19	97.70	- .32			102.00	- .26	99.27	- .81
ROCHESTER, N.Y.	DBP	99.80		103.60				108.96			
	RACK	97.60	- .10	101.25	- .10			105.98	- .12	105.87	- .33
ROSEBURG, OR	DBP	95.55	-1.18	98.71	-1.01	104.20		104.80	-1.18		
	RACK	94.85		98.10				103.30			
SACRAMENTO, CA	DBP	96.50	-1.22	99.93	-1.04	107.00		105.58	-1.22	102.80	+1.00
	RACK	93.84	-1.57	97.18	-1.53	99.50	-1.00	101.31	-1.45	95.88	- .15
SALT LAKE, UT	DBP	101.30	+ .21	105.38	+ .21	109.13		110.83			
	RACK	98.04	- .11	102.04	- .11	108.35	+1.63	106.00		93.77	+ .38
SAN ANTONIO, TX	DBP	96.08	- .18	100.08	- .18			105.08	- .18		
	RACK	92.07	- .27	95.07	- .40			99.80	- .37	97.18	- .25
SAN FRANCISCO, CA	DBP	96.06	-1.62	99.55	-1.39	107.00		105.14	-1.62	100.90	+ .50
	RACK	92.40	-2.12	95.95	-2.17	97.81	-1.75	100.25	-2.14	95.69	- .50
SAN DIEGO, CA	DBP	94.23	-1.82	97.84	-1.70	107.00		103.32	-1.82	97.50	-1.00
	RACK	90.88	-1.91	94.25	-2.13	97.63	- .50	100.25	- .88	95.32	-1.00
SAVANNAH, GA	DBP	99.55	- .17	103.55	- .17			108.55	- .17		
	RACK	94.19	- .24	97.53	- .31			101.75	- .20	98.00	-1.63
SCRANTON, PA	DBP	95.63	+ .17	99.57	+ .17			104.65	+ .17		
	RACK	94.08	-1.50	97.83	-1.50			100.10	-3.00	103.64	- .60
SEATTLE, WA	DBP	92.92	-1.47	96.31	-1.26	103.70		102.00	-1.47	100.65	+ .50
	RACK	93.33	- .39	96.83	- .46	105.00		102.35	+ .04	96.64	
SELMA, NC	DBP	99.05		103.05				108.55			
	RACK	93.81	- .41	97.02	- .62			101.14	- .48	99.21	-1.20
SIOUX CITY, IA	DBP	100.95	- .45	104.95	- .45			110.30	- .40		
	RACK	94.06	- .75	97.56	- .75			102.47	- .50	98.46	- .50
SIOUX FALLS, SD	DBP	100.00	- .25	104.00	- .25			109.50	- .25		
	RACK	95.89	- .60	99.26	- .60			103.66	- .50	99.76	-1.10
SPARTANBURG, SC	DBP	97.56	- .54	101.56	- .54			106.96	- .54		
	RACK	93.65	- .42	96.98	- .54			101.31	- .42	99.08	-1.35
SPOKANE, WA	DBP	97.32	- .67	100.35	- .67	101.10		106.13	- .62	102.30	
	RACK	95.53	- .88	98.84	-1.13	103.30		104.13	- .80	96.25	+ .12
SPRINGFIELD, MA.	DBP	98.46	- .19	102.53	- .19			107.36	- .21		
	RACK										
ST LOUIS, MO	DBP	97.04	- .16	100.73	- .16	104.00		106.07	- .18		
	RACK	93.05	- .61	96.48	- .68			100.62	- .66	97.97	- .65
STOCKTON, CA	DBP	96.25	-1.43	99.86	-1.23	108.00		105.33	-1.43		
	RACK	93.53	- .75	97.03	- .75	100.15	- .75	100.78	- .75	95.50	- .33
SYRACUSE, NY	DBP	99.68		103.41				108.53			
	RACK	98.23		101.85				108.25		105.18	- .50
TAMPA, FL	DBP	98.27	- .16	102.23	- .16			107.51	- .16		
	RACK	93.95	- .48	97.20	- .61			101.65	- .44	99.40	- .75
TOLEDO, OH	DBP	97.85	- .45	101.78	- .45			106.87	- .45		
	RACK	94.20	- .24	97.70	- .24			103.09	+ .12	99.40	- .18
TRENTON, NJ.	DBP	95.75		99.59				105.01			
	RACK										
TUCSON, AZ	DBP	93.84	- .61	97.84	- .61			103.41	- .72		
	RACK	93.91	- .78	97.37	- .82	100.45	- .25	103.52	+ .71	96.16	+ .33
TULSA, OK	DBP	98.57	- .20	102.57	- .20			107.28	- .25		
	RACK	93.14	- .05	96.39	- .10			99.75	- .25	96.59	- .54
UMATILLA, OR	DBP	101.50	-1.50	104.50	-1.50			110.50	-1.50		
	RACK	94.50	-1.50	98.00	-1.50			101.50	-1.50	96.50	+ .50
WASHINGTON, D.C.	DBP	95.09	- .33	98.98	- .33			104.32	- .33		
	RACK	93.67	- .41	97.08	- .50			101.42	- .41	100.46	-1.10
WICHITA, KS	DBP	98.45	- .60	102.45	- .60			108.00	- .70		
	RACK	92.88	- .74	96.13	- .74			99.80	- .66	96.77	- .79
WILMINGTON, DE	DBP	93.39	- .27	97.23	- .27			102.49	- .30		
	RACK	93.23	- .90	96.73	- .90					102.75	
WILMINGTON, NC	DBP	98.13		102.13				107.13			
	RACK	93.95	- .43	97.20	- .61			101.40	- .20	98.40	-1.42
WORCESTER, MA.	DBP	98.32	- .32	102.29	- .32			107.51	- .30		
	RACK										
YONKERS, NY.	DBP	100.79	- .22	104.74	- .22			110.13	- .19		
	RACK										
YORK, PA	DBP	94.76		98.59				103.98			
	RACK	95.25		99.25				103.25		104.00	
YUMA, AZ	DBP	97.34	-1.56	100.98	-1.47	107.70	-1.00	106.30	-1.56		
	RACK	94.71	-1.13	98.34	-1.12	103.75	- .25	101.80	-1.50		
U. S. AVERAGES	DBP	97.97	- .46	101.88	- .44	104.81	- .32	107.20	- .48	100.84	+ .16
	RACK	93.68	- .59	97.17	- .66	100.13	- .22	101.61	- .58	98.57	- .51

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LUNDBERG LETTER

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Analysis in Oil Marketing

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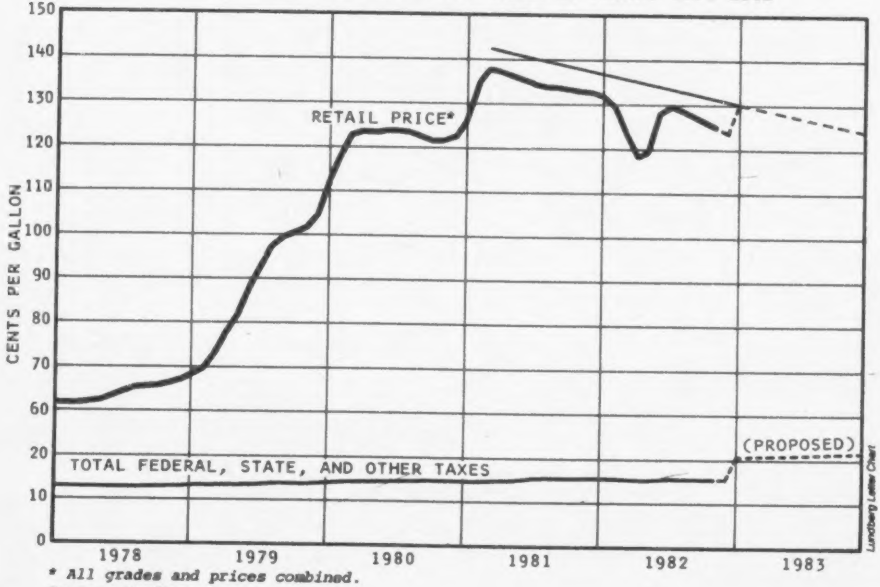
VOLUME X NUMBER 4

NOVEMBER 26, 1982

Growing Like Topsy

The Truth About the Proposed Gasoline Tax Increase

U.S. RETAIL GASOLINE PRICES AND TAXES BY MONTH, 1978-1982



** All grades and prices combined.*
Source: Lundberg Survey.

IF A PROPOSED 5¢ gal. federal gasoline tax increase went into effect in January 1983, retail prices and taxes would rise as shown by the dashed lines. Gasoline prices are soft and on a downtrend, indicated by the sloped straight line. If this trend continued, the tax increase would be offset by the end of the year.

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Growing Like Topsy

THE TRUTH ABOUT THE PROPOSED GASOLINE TAX INCREASE

THE PRESIDENT and Congress appear to be headed definitely toward adoption of a 5¢ gal. gasoline tax increase that could go into effect as soon as the first of the year. The impact on the nation will be considerable.

In 1983 the tax would collect an estimated $5-billion on gasoline and another $0.7-billion on diesel fuel and special fuels (such as propane and natural gas), for a total of $5.7-billion. Disregard all other estimates you have read or heard as the ones in this analysis are based on accurate motor-fuel sales forecasts for 1983.

This amount is already in excess of the stated objective of $5.5-billion, and there's more.

Certain other planned changes in highway-user taxes would collect an additional unspecified amount depending on how legislation was written.

In originally proposing a 4¢ gal. gasoline-tax increase, Secretary of Transportation Drew Lewis spoke of collecting the equivalent of another 1¢ gal., or about $1.1-billion, through these other taxes. If this objective were maintained, the tax would amount to $6.8-billion.

It's unknown what amounts of these other user taxes the Department of Transportation (DOT) will propose to accompany a 5¢ gal. tax. Moreover, Congress may be of a different mind on highway-user taxes because of the political nature of some of them.

Government statisticians have multiplied the annual expected tax income by five to calculate the five-year expected income. On this basis, the five-year income could come to $34-billion, not the $27.5-billion officially stated.

All of this money would go into the highway trust fund, not the general national budget: 80% earmarked for the repair of highways and bridges and 20% for rapid transit.

This work would create an estimated 320,000 jobs, directy and indirectly, the government estimates.

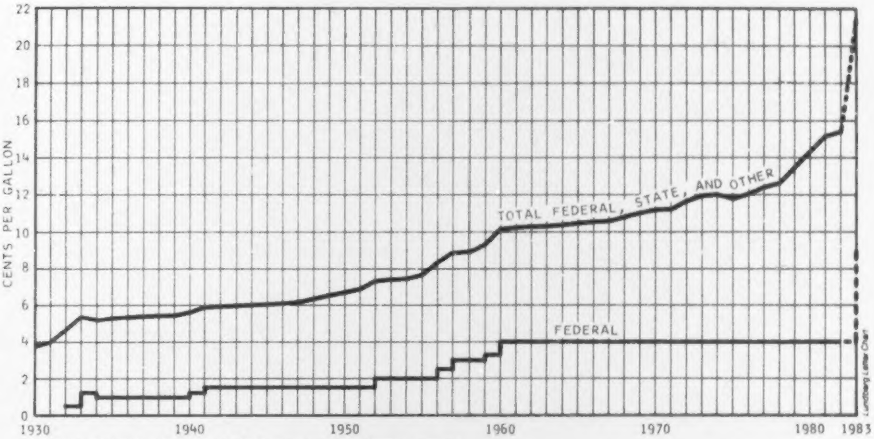
Tax Trends

Gasoline taxes have been rising almost continuously for more than a half century. The graph on page 3 shows the trend by year since 1930.

The first federal tax of 1¢ gal. went into effect on June 21, 1932. It appears that year as 0.5¢ gal. on the graph because it was in effect only about half of the year.

The current 4¢ gal. federal tax went into effect on Oct. 1, 1959. It

FEDERAL, STATE, AND OTHER GASOLINE TAXES, 1930-1983



Sources: Federal Highway Administration, Lundberg Survey.

appears that year as 3.25¢ gal. on the graph because it was in effect only one-fourth of the year.

State and other excise and sales taxes already stood at an average 3.70¢ gal. in 1930. There was a marked acceleration of the uptrend in the late 1950s and again after 1978. The national weighted average of all nonfederal gasoline taxes in 1982 stands at 11.41¢ gal.

But look what would happen to gasoline taxes in 1983 if a 5¢ gal. increase of the federal tax went into effect in January. The increase is very large in this perspective.

Nonfederal gasoline taxes began rising more steeply after 1978 because that was the peak year for gasoline sales. With gasoline sales declining and taxes mostly based on gallons, new taxes began to appear to offset the decline.

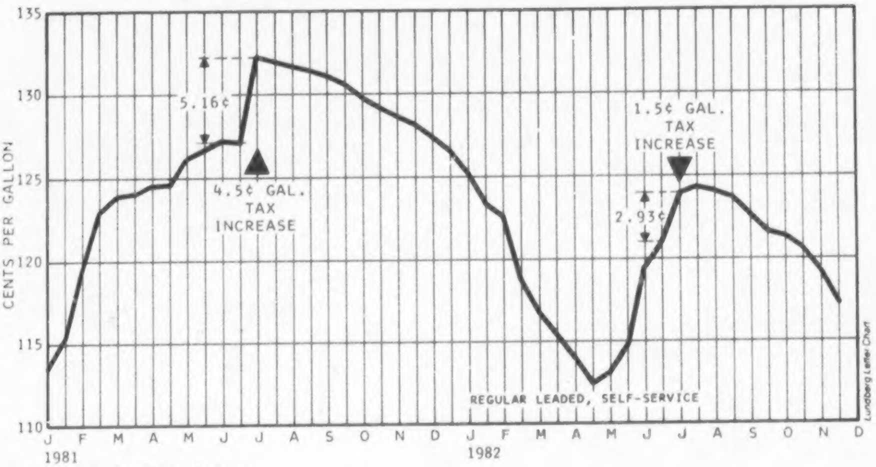
The national average nonfederal tax in January 1978 was 8.80¢ gal., and it had risen to 11.42¢ gal. by November 1982.

These nonfederal taxes continue to rise. Therefore, the combined national average gasoline tax of 15.4¢ gal. estimated for December 1982 would become 20.4¢ gal. in January 1983 and increase to an estimated 21.4¢ gal. in December 1983.

There is potential for further increases, but they are too difficult to measure and are not included in these calculations:

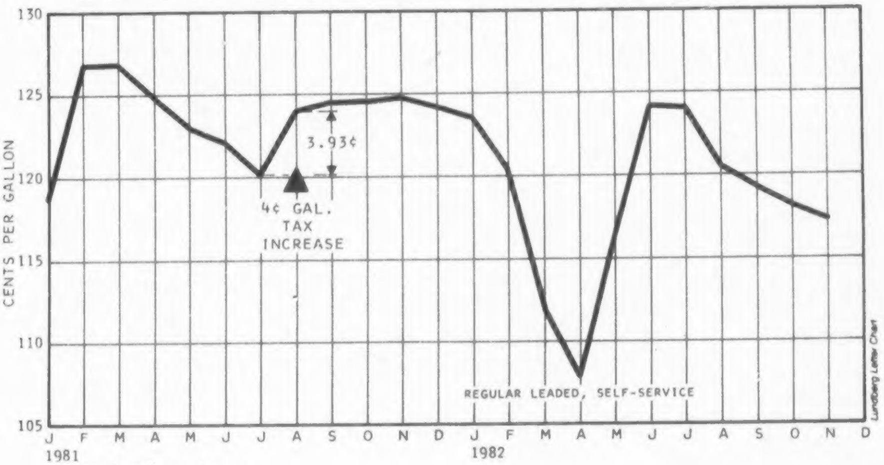
States will be required to match federal highway and bridge expenditures to some degree, generally 10% to 20% depending on type. Many say this will

HOW NEVADA GASOLINE TAX INCREASES AFFECTED LAS VEGAS RETAIL PRICES



Source: Lundberg Survey.

HOW A WISCONSIN GASOLINE TAX INCREASE AFFECTED MILWAUKEE RETAIL PRICES



Source: Lundberg Survey.

require them to seek additional motor-fuel taxes. This would further accelerate the taxation trend and could be stretched over several years.

A few states have variable gasoline taxes that rise with retail prices, tax included. These taxes are tiny when absorbed into the national average, but not necessarily small in the states where they go into effect.

A few states have sales taxes on tax-included prices. A state with a 6% sales tax of this type would collect an additional 0.3¢ gal. on a 5¢ gal. federal tax increase.

Impact on Motorists

A 5¢ gal. gasoline tax increase alone will cost the average U.S. motorist $24 in 1983. Disregard all other estimates you have read or heard.

Both President Reagan and Transportation Secretary Lewis mentioned an average cost of $30 a year. This is apparently based on estimated average consumption of 600 gal. annually, which was approximately the case in 1980.

> This would also be the case if a motorist drove 12,000 miles a year and got 20 miles per gal.

To be more accurate, however, in 1983 the average U.S. motorist will drive 7,800 miles, get 16.3 miles per gal., and buy 479 gal. of gasoline. This comes out to an expenditure of $23.95 on a 5¢ gal. tax.

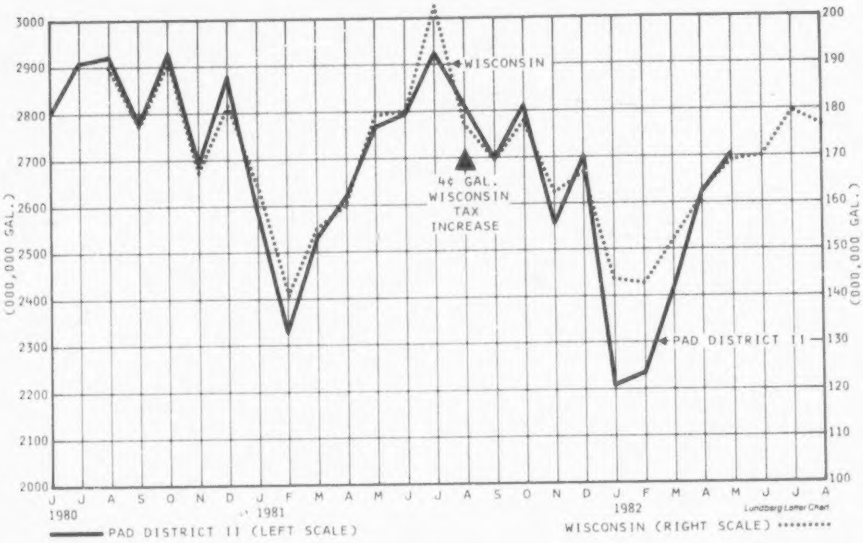
Complicating Factors

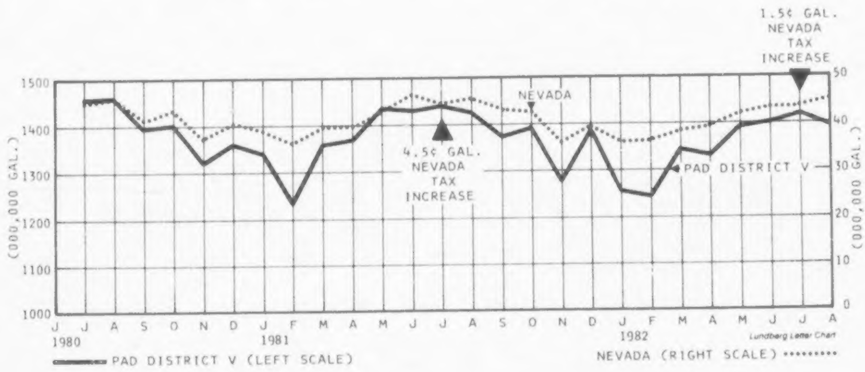
Gasoline and diesel-fuel prices would increase on the effective date approximately by the amount of the federal tax increase -- approximately, and not necessarily exactly, because retailers are free to set pump prices at whatever levels they want.

> Actually, many retailers raise gasoline prices a bit more, on average, than the tax increase in hope of improving their margins, even if only for awhile. After a short time competition forces them back to the relative positions they were in before the tax increase.
>
> > This phenomenon can be seen in the graphs on page 4, showing what happened to gasoline prices after state tax increases in Nevada and Wisconsin, where large increases have gone into effect recently.
> >
> > > In Las Vegas, gasoline prices jumped 5.16¢ gal. when a 4.5¢ gal. Nevada tax increase went into effect in July 1981 and another 2.93¢ when a 1.5¢ gal. increase took effect in July 1982.
> > >
> > > In Milwaukee, gasoline prices jumped 3.93¢ gal. when a 4¢ gal. Wisconsin increase went into effect in August 1981. The relatively small size of this increase can probably be explained by the fact that prices were trending downward at the time. (Curiously, prices firmed noticeably after the tax increase,

DID STATE TAX INCREASES IN WISCONSIN AND NEVADA AFFECT GASOLINE SALES?

STATE AND REGIONAL SALES COMPARED, 1980-1982





Source: Lundberg Survey Taxable Sales.

although they had been falling sharply during the preceding four months. Eventually the downtrend resumed.)

Gasoline price increases are further complicated by the fact that other trends are operative at the time a new tax goes into effect.

For example, prices could be on an uptrend or a downtrend, causing prices to increase either more or less than the tax increase. Similarly, new state or other taxes could be going into effect at the same time, causing prices to rise more than the amount of a new federal tax.

With gasoline prices soft and trending downward at the present time, a 5¢ gal. federal tax going into effect Jan. 1, 1983, would tend to be offset, gradually, but noticeably over time. In fact, this analysis shows that if current price trends continue, the 5¢ increase could be completely offset by the end of next year.

It would be fallacious, of course, to think the tax was gone, even if this happened. Motorists might be paying no more in December than they were in January, but if the tax had not been passed, they could have been paying 5¢ gal. less.

The straight sloped line in the graph on page 1 represents the retail price trend from March 1981 through November 1982, leaving out the big six-month dip near the middle of the period. Thus it combines the price trend, which is downward, and the tax trend, which is upward but only partially offsetting.

Prices might or might not follow that trend in 1983. One could argue that they probably won't unless crude-oil prices fall because declining prices eventually bump into irreducible costs and bottom out. But if the trend did continue, the straight sloped line shows what could happen.

The estimated national average price (all grades and prices combined) in December 1982 will be about $1.24. All trends taken into account, the price would average $1.29 in January if the 5¢ gal. federal tax went into effect. With the reservations stated, it could slip to $1.24 by December 1983.

This is not a forecast. But given the stated conditions, it could happen.

Those Other User Taxes

The $1.1-billion of other highway-user taxes Secretary Lewis described are part of a package DOT has been considering for some time. A main purpose of this package is to increase taxes on heavy trucks, which DOT studies have shown are not paying their share.

One tax proposal reported under consideration was to increase the diesel-fuel tax 8¢ gal. instead of 5¢, raising it to 12¢. This plan has apparently been set aside in favor of an across-the-board 5¢ increase.

Very much alive is a proposal to increase annual heavy-vehicle use taxes, which apply to trucks with gross vehicle weight of more than 26,000 lbs. For example, trucks weighing 55,000-70,000 lbs. would be charged X dollars a year plus so much per hundred lbs.; 70,000-80,000 lbs., more; over 80,000 lbs., a flat rate.

Other taxes that are part of the package are those on tires, tread rubber, inner tubes, lubricating oil, and truck parts. These would be adjusted up or down "in accordance with somebody's idea of equity and cost allocation," a DOT source said.

> The rationale behind the adjustments is to make people pay for highways and bridges according to the degree of their usage.

Effect on Gasoline Sales

Theoretically, higher prices reduce consumption. In the case of gasoline, the effect is often difficult or impossible to see.

Some economists say gasoline's "elasticity" is -0.2 in the short term, -0.7 in the long term. This means, in the short term, that for every 10% increase in gasoline prices, gasoline demand should fall 2% in about a year.

> If this were true, a 5¢ gal. price increase in January 1983 would cause gasoline demand of approximately 100-billion gal. in 1982 to fall 800-million gal. after about a year.

> But this is highly theoretical, and don't bet on it.

In an attempt to see if recent large state gasoline taxes had any effect on sales, the cases of Wisconsin and Nevada were examined. Wisconsin's tax increased 4¢ gal. in August 1981. Nevada's tax increased 4.5¢ in July 1981 and another 1.5¢ in July 1982. The graphs on page 6 show the results.

> Comparison of state and regional gasoline sales provides no perceptible evidence that tax increases reduced sales in the respective states during the period.

Summary and Conclusions

-- A 5¢ gal. federal motor-fuel tax increase, or one near that amount, seems a certainty in 1983. It would likely apply to gasoline, diesel fuel, and special fuels alike.

-- This would be a very large tax increase, more than doubling the federal tax rate that has been in effect for more than 20 years. It would raise current total gasoline taxes by one-third.

-- A 5¢ gal. increase would raise $5-billion on gasoline and $700-million on diesel and special fuels in 1983, a total of $5.7-billion.

-- The cost of this increase to an average motorist would be about $24 in 1983.

-- Additionally, other highway-user taxes could amount to $1-billion-plus, based on past statements by Secretary Lewis. The amount would depend on the actual legislation DOT proposes and Congress passes.

-- The new tax would accelerate the imposition of state and other motor-fuel taxes by an unknown, but probably significant, amount. These taxes have already been rising steadily.

-- The federal government plans to spend the proceeds on the repair of highways and bridges and on rapid transit, creating what it estimates will be 320,000 jobs, directly and indirectly.

-- How many jobs motorists would create by spending $5.7-billion in 1983 in other ways isn't stated.

-- Because gasoline prices are soft and falling, a 5¢ increase could possibly be offset by competitive forces within a year. If the increase did not go into effect, motorists might have enjoyed greater gasoline cost reductions.

-- Watch the proposed tax increase grow. Even since Secretary Lewis began talking about new highway-user taxes, we have seen the motor-fuel excise tax portion of the package grow from 4¢ to 5¢ gal., -- a billion-dollar difference. With the President and key Congressional leaders behind the proposal, proponents may be expected to go for all the traffic will bear.

-- This highway-user tax package could become bigger than anyone has so far officially stated.

#

LUNDBERG PRICE/MARGIN REPORT

SURVEY OF NOVEMBER 19, 1982

		RETAIL AVERAGE PRICES				WHOLESALE AVERAGE PRICES*				APPARENT AVERAGE MARGINS			
		REGULAR		PREMIUM		REGULAR		PREMIUM		REGULAR		PREMIUM	
		LEADED	UNLEADED	LEADED	UNLEADED	LEADED	UNLEADED	LEADED	UNLEADED	LEADED	UNLEADED	LEADED	UNLEADED
ANCHORAGE, AK	F	148.49	153.56		159.24	106.36	110.50		115.17	30.13	31.06		32.07
	S	123.51	133.84	145.90	147.46	106.90	111.20	117.40	115.43	4.61	10.64	16.50	20.03
ATLANTA, GA	F	142.22	149.02		155.37	97.56	101.45		107.24	27.98	30.63		30.94
	S	114.87	124.03		139.86	97.11	100.89		106.50	2.13	7.16		16.77
BAKERSFIELD, CA	F	139.88	147.40	152.00	153.41	95.63	99.51	107.26	104.29	25.33	28.55	25.14	29.44
	S	117.23	125.77	135.82	138.15	95.84	99.55	104.62	104.40	3.75	8.10	12.51	14.93
BIRMINGHAM, AL	F	136.35	142.55		149.02	97.37	101.33		106.37	22.98	25.22		26.65
	S	118.09	126.62	135.40	137.78	96.77	100.57	104.50	105.48	5.32	10.05	14.90	16.30
BOISE, ID	F	140.29	145.17	149.30	152.64	102.38	106.30	109.15	110.35	21.41	22.37	23.65	25.79
	S	124.29	130.01	138.72	142.39	101.55	105.42	113.69	110.21	6.24	8.09	8.53	15.68
CINCINNATI, OH	F	131.73	137.47		145.81	97.38	101.25		106.48	18.65	20.52		23.63
	S	115.44	122.21		133.19	96.98	100.79		106.19	2.76	5.72		11.30
DALLAS, TX	F	135.21	140.83		146.65	95.43	99.40		104.36	30.78	32.43		33.29
	S	107.42	114.61		126.76	94.99	98.81		103.82	3.43	6.80		13.94
DETROIT, MI	F	144.39	150.33		159.45	95.46	99.33		104.88	28.80	30.64		33.86
	S	115.25	122.15		139.53	95.25	99.04		104.73	.99	3.83		14.85
FRESNO, CA	F	141.82	147.60	147.12	155.40	96.26	99.81	105.77	105.14	26.53	28.46	22.02	30.46
	S	122.69	130.07	136.95	141.81	96.48	100.03	104.18	105.36	8.23	11.68	14.02	17.42
HONOLULU, HI	F	152.22	157.50	161.33	167.99	102.08	106.07	110.11	111.96	25.29	26.37	26.02	30.59
	S	132.51	143.41	151.30	151.63	101.26	105.25	109.38	108.80	7.15	13.64	17.10	18.00
JACKSON, MS	F	141.46	146.91	156.95	153.71	98.31	102.24	105.30	107.53	23.41	24.67	31.18	25.86
	S	121.30	128.34		138.68	97.11	100.82		106.54	5.50	8.41		12.56
KANSAS CITY, MO	F	128.48	133.81		143.74	97.66	101.41		107.52	19.82	21.40		25.22
	S	111.30	118.06		128.22	96.26	99.80		105.01	4.04	7.26		12.21
LAS VEGAS, NV	F	141.79	148.11	152.99	154.03	97.25	101.09	107.17	106.25	26.54	29.02	27.82	29.78
	S	115.99	125.34	136.51	139.60	96.91	100.47	103.92	105.81	1.08	6.87	14.59	15.79
LONG ISLAND, NY	F	129.01	135.98	134.21	147.77	98.96	102.87	107.10	108.47	9.87	12.66	6.39	17.85
	S	123.87	130.36	132.90	142.46	98.74	102.65	107.10	108.00	5.30	7.44	5.36	13.37
LOS ANGELES, CA	F	135.40	141.83	145.86	149.36	93.94	97.64	104.21	103.08	22.45	24.72	21.92	26.55
	S	113.88	121.06	135.09	135.19	93.74	97.33	101.70	103.08	2.34	5.50	14.32	13.04
LOUISVILLE, KY	F	134.48	139.78		146.66	97.01	100.92		105.99	23.47	24.86		26.67
	S	113.83	121.30		130.91	95.64	99.42		104.44	4.19	7.88		12.47
MEMPHIS, TN	F	137.25	143.51		148.50	97.80	101.65		106.91	25.45	27.87		27.59
	S	112.31	121.34		134.95	96.66	100.27		105.42	1.65	7.07		15.53
MIAMI, FL	F	134.66	141.82		149.48	97.83	101.76		107.25	24.83	28.06		30.23
	S	111.49	120.37		131.69	97.68	101.53		107.15	1.81	6.84		12.54
MILWAUKEE, WI	F	135.56	143.13		148.83	97.66	101.92		107.17	20.90	24.23		24.66
	S	116.18	123.27		134.66	97.21	101.16		106.57	1.97	5.11		11.09

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REPRODUCTION PROHIBITED.

CONTINUED FROM PREVIOUS PAGE

		RETAIL AVERAGE PRICES				WHOLESALE AVERAGE PRICES*				APPARENT AVERAGE MARGINS			
		REGULAR		PREMIUM		REGULAR		PREMIUM		REGULAR		PREMIUM	
		LEADED	UNLEADED	LEADED	UNLEADED	LEADED	UNLEADED	LEADED	UNLEADED	LEADED	UNLEADED	LEADED	UNLEADED
MINNEAPOLIS, MN	F	149.90	155.01		164.44	100.67	104.58		110.68	32.23	33.43		36.76
	S	121.30	127.38	144.34	135.43	98.27	101.92	103.70	106.91	6.03	8.46	23.64	11.52
NEW HAVEN, CT	F	130.04	136.74	133.90	146.78	99.71	103.53	108.40	108.65	15.33	18.21	10.50	23.13
	S	118.31	125.17		138.63	99.80	103.54		108.61	3.51	6.63		15.02
NEW ORLEANS, LA	F	139.20	145.03		152.91	96.94	100.93		106.38	30.26	32.10		34.53
	S	111.63	119.55		135.50	96.34	100.14		105.45	3.29	7.41		18.05
NEWARK, NJ	F	117.84	124.36		135.35	98.08	101.91		107.16	7.76	10.45		16.19
	S	114.07	121.73		132.40	96.13	99.54		103.96	5.94	10.19		16.44
OMAHA, NE	F	141.12	147.63		154.59	99.23	103.01		106.26	23.89	26.62		30.33
	S	118.76	126.31		132.11	97.70	101.38		104.78	3.06	6.93		9.33
PHILADELPHIA, PA	F	127.99	133.49		145.30	95.82	99.63		105.03	17.17	18.86		25.27
	S	112.45	117.52		138.33	96.04	99.78		104.83	1.41	2.74		18.50
PHOENIX, AZ	F	135.15	140.43		146.27	92.03	96.35		101.65	29.12	30.08		30.62
	S	108.36	118.16	136.55	131.08	92.57	96.57	101.38	101.71	1.79	7.59	21.17	15.37
PITTSBURGH, PA	F	124.15	129.77		140.29	98.91	102.82		108.21	10.24	11.95		17.08
	S	115.13	120.86		134.38	99.64	103.35		108.65	.49	2.51		10.73
PORTLAND, OR	F	127.90	135.60	145.08	146.55	93.60	96.86	103.78	102.51	19.30	23.74	26.30	29.04
	S	111.93	121.35	138.28	137.75	93.73	96.96	103.89	102.61	3.20	9.39	19.39	20.14
PROVIDENCE, RI	F	128.47	135.97		145.37	97.07	100.83		106.22	16.40	20.14		24.15
	S	118.41	125.44		137.68	97.02	100.75		105.96	6.39	9.69		16.72
RENO, NV	F	147.13	153.67	161.07	162.02	99.76	103.57	109.50	109.01	27.37	30.10	31.57	33.01
	S	120.92	129.27	144.32	145.00	100.08	103.67	106.92	108.55	.84	5.60	17.40	16.45
SACRAMENTO, CA	F	140.99	146.83	148.43	156.14	96.43	99.85	106.59	105.52	25.58	27.67	22.44	26.90
	S	117.32	124.62	134.86	137.22	95.89	99.30	102.79	105.19	3.51	7.27	13.44	13.26
SALT LAKE CITY, UT	F	133.68	138.91	144.75		101.08	105.04	109.78		17.60	18.87	19.97	
	S	120.11	125.49	133.95	133.90	99.78	103.78	109.43	107.00	5.33	6.71	9.52	11.90
SAN DIEGO, CA	F	139.67	145.19	149.32	152.98	94.02	97.82	106.14	103.13	26.74	28.15	23.73	30.19
	S	115.38	122.14	135.85	137.97	93.86	97.36	101.54	103.41	3.92	6.87	15.62	15.75
SAN FRANCISCO, CA	F	139.97	146.39	150.70	154.63	95.85	99.66	105.92	104.96	24.65	27.09	24.66	29.15
	S	118.39	126.92	138.91	139.91	95.45	98.99	102.62	104.74	4.78	9.25	16.89	15.73
SEATTLE, WA	F	136.75	141.62	147.65	149.76	92.91	96.43	103.73	101.92	27.84	29.19	27.92	31.84
	S	111.13	118.89	134.99	134.84	93.23	96.63	104.31	102.14	1.90	6.26	14.68	16.70
SPOKANE, WA	F	136.34	141.70	153.10	149.75	97.35	100.42	104.30	106.19	22.99	25.28	32.80	27.56
	S	120.27	125.25	128.70	133.17	96.97	100.12	104.30	105.77	7.30	9.13	8.40	11.40
STOCKTON, CA	F	140.46	147.09	150.69	153.67	95.52	99.22	106.29	104.79	26.16	28.56	24.87	29.18
	S	119.42	127.47	135.52	138.86	95.48	98.95	103.43	104.59	6.18	10.30	13.42	15.41
TAMPA/ST PETE, FL	F	134.57	141.36		148.74	97.90	101.79		107.65	23.99	26.87		28.41
	S	111.21	120.79		135.28	97.20	100.92		106.54	1.33	7.19		16.06
TUCSON, AZ	F	129.48	135.63	121.90	144.97	92.96	97.19	101.45	102.40	22.52	24.44	6.45	28.57
	S	110.63	119.27	132.40	130.91	93.80	97.70	101.45	102.68	2.83	7.57	16.95	14.23
WASHINGTON, DC	F	138.53	144.18		151.85	94.51	98.46		104.03	27.53	29.23		31.33
	S	114.62	121.05		136.11	94.64	98.51		103.99	3.49	6.05		15.63

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REPRODUCTION PROHIBITED.

LUNDBERG DEALER BUYING PRICE (DTW, EX ALL TAXES), AND RACK REPORT

PRICES OF: 11/24/82

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THESE PRICES ARE OFFERED AS RELIABLE STATISTICAL GUIDELINES, NOT WARRANTED
AS ACCURATE FOR PRICING DECISIONS. ALL PRICES EX-TAXES.

		REGULAR				PREMIUM				DIESEL NO. 2	
		LEADED		UNLEADED		LEADED		UNLEADED			
AVERAGE BY CITY		PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE
ABILENE, TX	DBP	98.52	- .54	102.52	- .54			106.95	- .43		
	RACK	93.38	- .62	96.88	- .62			101.75	- .75	94.75	- .50
AKRON, OH	DBP	96.96	- .43	100.91	- .43			105.98	- .43		
	RACK	93.53	- .22	97.28	- .22			101.53	- .22	98.75	- .75
ALBANY, NY	DBP	100.69		104.46				109.51			
	RACK	95.68	- .50	99.34	- .50			104.58	- .50	103.07	- .17
ALBUQUERQUE, NM	DBP	99.95	- .49	103.95	- .49	106.90		109.06	- .48	97.30	
	RACK	96.20	- .20	99.90	- .20	103.99		104.50	- .25	96.35	+ .20
ALLENTOWN, PA	DBP	95.14	- .17	98.99	- .17			104.31	- .19		
	RACK										
ANCHORAGE, AK	DBP	105.33	- .33	109.17	- .33	116.40	-1.00	115.20	- .50	97.80	
	RACK	107.85		112.85				116.85			
ATLANTA, GA	DBP	97.66	- .19	101.66	- .19			106.88	- .19		
	RACK	93.19	- .57	96.41	- .70			100.75	- .69	97.87	-1.01
BAKERSFIELD, CA	DBP	94.23	-1.95	97.70	-2.10	106.55	-2.50	103.32	-1.95	102.28	
	RACK	93.36	- .90	96.93	- .91	100.15	-1.07	100.85	- .32	95.40	- .10
BALTIMORE, MD	DBP	94.32	- .18	98.22	- .18			103.55	- .10		
	RACK	92.28	- .30	95.78	- .38			99.92	- .26	99.59	- .75
BANGOR, ME	DBP	100.07	- .58	104.07	- .58			109.00	- .60		
	RACK	97.68	- .37	101.18	- .37			105.95	- .30	103.65	-1.00
BAY CITY, MI	DBP	97.73		101.63				107.18			
	RACK	94.45	- .33	97.78	- .34			104.00	- .50	99.63	- .62
BILLINGS, MT	DBP	97.70	- .33	101.53	- .33	102.00	-1.00	107.03	- .33		
	RACK	95.97	- .06	99.91	- .12			103.85		96.33	+ .11
BINGHAMTON, NY	DBP	100.33	- .05	104.09	- .05			109.55	- .05		
	RACK	96.53	- .59	100.12	- .58			105.62	- .58	101.30	-5.00
BIRMINGHAM, AL	DBP	97.54	- .45	101.54	- .45	104.50		106.68	- .51	100.30	-1.00
	RACK	92.86	- .34	96.03	- .50			100.42	- .49	97.39	- .89
BISMARK, ND	DBP	102.20		106.20				111.70			
	RACK										
BOISE, ID	DBP	103.04	- .29	106.87	- .29	108.82	- .67	111.03	- .50	99.50	
	RACK	99.02		102.95		113.98				95.78	
BOSTON, MA	DBP	97.25	- .76	101.12	- .76	105.90	- .50	106.29	- .79		
	RACK	95.16	- .65	98.66	- .73			103.41	- .65	103.65	- .60
BRATTLEBORO, VT	DBP	100.70		104.70				109.70			
	RACK										
BRONX, NY	DBP	101.15	- .19	105.23	- .19			110.89	- .14		
	RACK										
BUFFALO, NY	DBP	99.48		103.20				108.35			
	RACK	96.80	- .63	100.80	- .63			105.30	- .63	100.50	-4.50
BURLINGTON, VT	DBP	103.10	- .43	106.95	- .43			111.95	- .29		
	RACK	101.80		104.80				109.80			
CASPER, WY	DBP	101.31	- .20	105.21	- .20	106.80	-1.00	111.38			
	RACK	97.79	+ .02	101.44	- .03					95.28	- .32
CHARLESTON, SC	DBP	98.32	- .21	102.32	- .21			107.61	- .21		
	RACK	93.81	- .44	97.31	- .44			101.63	- .64	98.28	- .50
CHARLESTON, WV	DBP	97.75		101.65				106.73			
	RACK	96.75	+ .25	100.25	+ .25			104.75	+ .25	100.50	
CHARLOTTE, NC	DBP	97.83	- .24	101.78	- .24	104.40		107.02	- .28		
	RACK	93.02	- .53	96.33	- .55			100.49	- .70	97.79	-1.08
CHATTANOOGA, TN	DBP	98.45	- .28	102.45	- .28			107.78	- .28		
	RACK	93.12	- .38	96.37	- .44			100.92	- .52	97.62	- .52
CHICAGO, IL	DBP	97.05	- .45	100.86	- .45			106.04	- .51		
	RACK	93.21	- .42	96.60	- .53	98.50		100.70	- .39	97.50	- .92
CHEYENNE, WY	DBP	101.27	- .50	105.10	- .58	107.80	-1.00	110.81	- .50		
	RACK	96.48	- .42	100.15	- .42					95.39	- .10
CINCINNATI, OH	DBP	97.24	- .33	101.19	- .33	104.60		106.36	- .33	105.80	
	RACK	93.85	- .41	97.45	- .41			101.74	- .44	98.82	-1.00
CLEVELAND, OH	DBP	97.23	- .50	101.16	- .50			106.24	- .50	105.80	
	RACK	93.78	- .33	97.44	- .34			101.53	- .30	99.57	- .34
COLORADO SPRINGS	DBP	99.83	- .46	103.58	- .46			108.66	- .46		
	RACK	95.98		99.10				103.70		94.00	-1.20
COLUMBUS, OH	DBP	96.50	- .50	100.43	- .50			105.52	- .50		
	RACK	93.39	- .55	97.05	- .55			101.39	- .55	99.07	- .33
COUNCIL BLUFFS, IA	DBP	99.77	- .45	103.47	- .45			107.50	- .50		
	RACK	94.97	- .18	98.47	- .18			102.73	- .37	98.85	
CUMBERLAND, MD	DBP	95.07	- .23	99.00	- .23			104.50	- .23		
	RACK	93.25	- .75	97.25	- .75			101.25	- .75	100.00	
DALLAS, TX	DBP	95.96	- .36	99.83	- .36			104.70	- .34		
	RACK	92.07	- .40	95.29	- .52			99.61	- .49	96.79	- .60
DAVENPORT, IA	DBP	99.24	- .76	103.14	- .76			107.68	- .83		
	RACK	95.15	- .10	98.32	- .10			101.85	- .15	97.75	

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LUNDBERG DEALER BUYING PRICE (DTW, EX ALL TAXES), AND RACK REPORT

PRICES OF: 11/24/82

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		REGULAR				PREMIUM				DIESEL NO. 2	
		LEADED		UNLEADED		LEADED		UNLEADED			
AVERAGE BY CITY		PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE
DAYTON, OH	DBP	96.84	- .43	100.78	- .43			105.85	- .43		
	RACK	93.25	- .63	97.00	- .63			101.00	- .63	98.35	- .75
DECATUR, IL	DBP	98.30	- .38	102.30	- .38			107.55	- .38		
	RACK	93.12	- .50	96.37	- .50			100.31	- .83	97.47	-1.00
DENVER, CO	DBP	99.29	- .64	103.08	- .64	104.75	-1.45	108.22	- .50	98.70	
	RACK	94.55	- .62	97.58	- .62	114.00	- .45	102.00	- .56	94.61	- .29
DES MOINES, IA	DBP	100.28	- .34	103.99	- .34			108.05	- .46		
	RACK	95.02	- .36	98.39	- .36			102.24	- .47	98.25	- .59
DETROIT, MI	DBP	96.51		100.46				105.77			
	RACK	93.39	- .05	96.89	- .05			102.52	- .25	99.06	- .80
DULUTH, MN	DBP	101.33	- .23	105.17	- .23			110.33	- .23		
	RACK	95.42	+ .02	98.65	- .08	102.75	+ .05			97.50	-1.08
EL DORADO, AR	DBP	97.30		101.30				106.30			
	RACK	92.78	- .37	96.08	- .57			99.84	- .63	96.51	- .95
EL PASO, TX	DBP	97.94	- .63	101.88	- .63	103.45	- .75	106.50	- .80	95.15	
	RACK	94.45	- .20	98.25	- .30			103.00		94.15	+ .10
EUGENE, OR	DBP	93.71	-1.00	96.85	- .86	102.20		102.88	-1.00		
	RACK	91.71	-1.17	95.13	-1.16			99.61	-1.40	97.52	+ .17
EVANSVILLE, IN	DBP	96.95	-1.00	100.95	-1.00			106.45	-1.00		
	RACK	92.80	- .38	96.30	- .38			100.55	- .38	98.36	-1.75
FAIRFAX, VA	DBP	94.56	- .21	98.38	- .21			103.72	- .21		
	RACK	93.28	- .67	96.78	- .67			100.88	- .75	99.58	-1.87
FARGO, ND	DBP	101.50		105.50				111.00			
	RACK	96.60	- .33	99.83	- .44			103.95	-1.00	99.44	-1.66
FRESNO, CA	DBP	94.77	-1.75	98.16	-1.93	105.30	-2.25	103.85	-1.75	101.40	
	RACK	92.94	-2.19	96.56	-2.19	100.75		100.81	-2.19	96.10	- .20
FT COLLINS, CO	DBP	100.01	- .60	103.71	- .60			108.81	- .60		
	RACK	95.50		98.50				103.50		94.25	-2.00
GLASSBORO, NJ	DBP	95.20	- .06	99.15	- .06			104.49	- .06		
	RACK	96.00		101.00				105.50		96.25	-6.75
GREELEY, CO	DBP	99.95	- .50	103.70	- .50			108.78	- .50		
	RACK	95.50		98.50				103.50			
GREEN BAY, WI	DBP	98.53	- .57	102.53	- .57			107.87	- .57		
	RACK	93.06	- .69	96.31	- .69			101.09	-1.37	97.95	-1.12
GREENSBORO, NC	DBP	97.66	- .36	101.61	- .36			106.96	- .36		
	RACK	93.08	- .57	96.30	- .66			100.55	- .77	97.60	-1.03
GREENVILLE, MS	DBP	97.15	- .50	101.15	- .50			106.15	- .50		
	RACK	93.38	- .07	96.75	- .08			101.33	- .27	96.89	- .25
HARRISBURG, PA	DBP	95.13	- .19	98.95	- .19			104.28	- .19		
	RACK	93.85		97.35						102.93	
HARTFORD, CT.	DBP	97.96	- .11	101.80	- .11			106.94	- .13		
	RACK									100.75	-1.00
HONOLULU, HI	DBP	102.78		106.56		110.71		111.65		100.20	
	RACK	97.30		101.30		104.80		105.80			
HOUSTON, TX	DBP	94.39	- .22	98.28	- .22	100.25		103.56	- .22		
	RACK	90.31	- .58	93.55	- .64			97.99	- .68	95.81	-1.21
INDIANAPOLIS, IN	DBP	97.04	- .34	100.99	- .34	104.00		106.23	- .34		
	RACK	93.07	- .25	96.65	- .34	98.50		100.59	- .38	98.81	-1.45
JACKSON, MS	DBP	98.38	- .44	102.38	- .44	105.30		107.54	- .50	106.00	- .50
	RACK	93.65	- .10	96.98	- .10			102.75		96.82	
JACKSONVILLE, FL	DBP	98.13	- .42	102.13	- .42			107.31	- .42		
	RACK	94.48	- .16	97.98	- .16			102.11	- .25	99.54	- .62
JEFFERSON CITY, MO	DBP	98.85	- .75	102.85	- .75			108.35	- .75		
	RACK	90.75	-1.00	93.75	-1.50					94.50	-1.75
KANSAS CITY, MO	DBP	98.79	- .08	102.50	- .21			107.74	- .08		
	RACK	93.71	- .44	97.04	- .50			101.45	- .50	97.31	- .64
KINGS, NY	DBP	100.30	- .14	104.40	- .13			110.01	- .13		
	RACK										
KLAMATH FALLS, OR	DBP	96.36	-1.00	99.80	- .83	106.50		105.66	-1.00		
	RACK	91.85	-2.13	95.10	-2.13			99.85	-2.13		
KNOXVILLE, TN	DBP	98.34	- .21	102.34	- .21			107.63	- .21		
	RACK	93.25	- .44	96.53	- .49			100.74	- .68	97.64	- .83
LAKE CHARLES, LA	DBP	98.06	- .20	102.06	- .20			107.46	- .20		
	RACK	92.10	- .25	95.43	- .42			99.88	- .37	96.27	- .66
LAS VEGAS, NV	DBP	96.60	-1.21	100.18	-1.19	106.50	-1.00	105.56	-1.21	100.70	
	RACK	95.04	- .60	98.54	- .60	100.50	- .38	103.15	- .25	95.69	- .25
LEBANON, NH.	DBP	99.90	- .50	103.90	- .50			108.90	- .50		
	RACK										
LITTLE ROCK, AR	DBP	96.87		100.87				105.87			
	RACK	92.75	- .52	96.09	- .68			100.01	- .83	97.00	- .73
LONG ISLAND, N.Y.	DBP	99.16	- .25	103.12	- .25	107.10		108.38	- .28		
	RACK	95.41	- .55	98.81	- .65			103.61	- .69	101.69	-1.27
LOS ANGELES, CA	DBP	92.60	-1.37	96.01	-1.46	103.00	-2.00	101.68	-1.37	99.90	
	RACK	90.03	- .61	93.43	- .75	96.69	- .61	98.22	- .24	93.94	- .54

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AVERAGE BY CITY		REGULAR				PREMIUM				DIESEL NO. 2	
		LEADED		UNLEADED		LEADED		UNLEADED			
		PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE
LOUISVILLE, KY	DBP	97.79	- .26	101.67	- .26			106.76	- .26	106.10	-1.00
	RACK	92.84	- .65	96.34	- .78			100.72	- .65	98.00	-1.56
MACON, GA	DBP	98.06	+ .13	102.06	+ .13			107.39	+ .13		
	RACK	93.06	- .57	96.15	- .70			100.65	- .64	97.47	- .82
MADISON, WI	DBP	98.20	- .53	102.20	- .53			107.53	- .53		
	RACK	93.67	- .17	96.84	- .16			102.25		96.94	- .77
MANCHESTER, NH	DBP	98.73	- .56	102.62	- .56			107.47	- .56		
	RACK										
MEMPHIS, TN	DBP	98.01	- .28	102.01	- .28			107.23	- .28		
	RACK	92.82	- .41	96.11	- .55			100.48	- .57	96.94	-1.07
MERIDIAN, MS	DBP	97.75	- .50	101.75	- .50			106.75	- .50		
	RACK	93.22	- .30	96.60	- .42			100.80	- .40	97.96	- .69
MIAMI, FL	DBP	98.09	- .37	102.05	- .37			107.33	- .37		
	RACK	93.79	- .28	97.15	- .28			101.53	- .39	98.95	- .79
MILWAUKEE, WI	DBP	98.44	- .14	102.15	- .14			107.38	- .17		
	RACK	93.43	- .69	96.89	- .91			101.51	- .50	98.69	- .87
MINNEAPOLIS, MN	DBP	100.13	- .37	104.04	- .37			109.39	- .30		
	RACK	95.58	- .29	99.08	- .29	102.75	+ .05	102.34	- .50	98.35	-1.18
MOBILE, AL	DBP	96.88	- .45	100.88	- .45			105.88	- .45		
	RACK	92.83	- .26	96.01	- .39			100.56	- .51	97.19	- .60
MONTGOMERY, AL	DBP	97.25	- .35	101.25	- .35			106.25	- .35		
	RACK	93.44	- .28	96.60	- .33			100.87	- .45	97.46	- .88
MUSKEGON, MI	DBP	97.33	- .25	101.23	- .25			106.78	- .25		
	RACK	93.93		97.18				103.43		98.13	-1.00
NASHVILLE, TN	DBP	98.01	- .29	102.01	- .29			107.01	- .29		
	RACK	93.55	- .50	96.90	- .61			100.73	- .57	98.77	- .48
NEW HAVEN, CT	DBP	97.98	- .18	101.86	- .18	105.40		107.11	- .19		
	RACK	95.09	- .45	98.46	- .45			102.97	- .33	100.75	-1.00
NEW LONDON, CT	DBP	97.68	- .31	101.62	- .31			107.02	- .31		
	RACK										
NEW ORLEANS, LA	DBP	96.98	- .11	100.92	- .11			106.13	- .11		
	RACK	92.93	- .27	96.18	- .36			100.30	- .43	97.86	- .37
NEW YORK, NY	DBP	101.09	- .19	105.29	- .17			110.89	- .13		
	RACK										
NEWARK, NJ	DBP	98.52	- .18	102.39	- .18			107.72	- .15		
	RACK	93.87	- .80	97.17	- .80			101.47	- .80	99.63	-1.85
NEWBURGH, NY	DBP	101.07	- .03	104.99	- .03			110.41	- .06		
	RACK										
NORFOLK, VA	DBP	96.46	- .37	100.33	- .37			105.58	- .37		
	RACK	93.32	- .70	96.55	- .79			100.93	- .74	98.66	-1.22
NORTH AUGUSTA, SC	DBP	98.40	- .90	102.40	- .90			108.07	- .90		
	RACK	92.99	- .36	96.24	- .48			100.23	- .67	97.82	- .79
OKLAHOMA CITY, OK	DBP	98.34	- .35	102.25	- .35			107.13	- .53		
	RACK	93.46	- .41	96.69	- .49			101.09	- .35	96.23	- .97
OLYMPIA, WA	DBP	92.92	- .83	96.21	-1.00	101.50	-2.00	102.17	- .83		
	RACK	91.43	-2.50	94.68	-2.50			99.43	-2.50		
OMAHA, NE	DBP	99.88	- .25	103.63	- .25			107.85	- .33		
	RACK	95.03	- .34	98.31	- .34			100.92	- .68	97.58	- .62
ORLANDO, FL	DBP	98.39	- .44	102.35	- .44			107.66	- .44		
	RACK	95.17	- .30	98.67	- .30			103.17	- .30	99.68	
PALM SPRINGS, CA	DBP	94.67	-1.37	98.21	-1.46	106.00	-2.00	103.75	-1.37		
	RACK	92.33	-1.25	95.58	-1.25			100.33	-1.25		
PASCO, WA	DBP	97.66	-1.50	101.16	-1.50			106.15	-1.33	101.70	
	RACK	94.38	-1.06	97.75	-1.06			102.33	-1.42	98.25	
PEORIA, IL	DBP	98.17	- .80	102.17	- .80			107.50	- .80		
	RACK	95.00		98.00	- .50			102.50	- .50	98.00	
PHILADELPHIA, PA	DBP	92.72	- .15	96.56	- .15	100.40		101.85	- .17		
	RACK	92.74	- .42	96.41	- .58			100.83	- .62	101.36	-2.00
PHOENIX, AZ	DBP	92.75	- .44	96.86	- .44			101.55	- .57	101.60	
	RACK	92.24	- .57	95.53	- .57	100.38		99.65	-1.00	96.45	- .20
PITTSBURGH, PA	DBP	95.50	- .25	99.30	- .25			104.61	- .25		
	RACK	94.78	- .20	98.58	- .20			104.35	- .25	101.06	- .38
PORTLAND, ME	DBP	99.21	- .38	103.16	- .31			108.11	- .36		
	RACK	96.03	- .30	99.68	- .32			104.43	- .34	102.52	- .37
PORTLAND, OR	DBP	92.78	- .83	96.01	- .86	102.40	-1.00	101.86	- .83	102.70	
	RACK	90.82	-1.61	94.16	-1.61	100.00	-5.00	98.80	-1.93	96.54	+ .08
PROVIDENCE, RI	DBP	96.57	- .60	100.39	- .60			105.66	- .55		
	RACK	93.65	- .50	97.25	- .54			100.80	- .55	104.90	-2.00
QUEENS, NY	DBP	100.57	- .21	104.80	- .19			110.43	- .14		
	RACK										
RAPID CITY, SD	DBP	102.65		106.65				111.98			
	RACK	97.68		101.68				105.00		95.10	
RENO/SPARKS, NV	DBP	99.33	- .50	102.93	- .43	109.50		108.42	- .50	102.08	
	RACK	97.91	- .85	101.41	- .85	100.13	-2.17	103.70	-1.45	97.38	

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		R E G U L A R				P R E M I U M				DIESEL NO. 2	
		LEADED		UNLEADED		LEADED		UNLEADED			
AVERAGE BY CITY		PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE	PRICE	CHANGE
RICHMOND, VA	DBP	96.65	- .40	100.47	- .40			105.81	- .40		
	RACK	92.81	- .84	95.92	- .91			100.35	- .83	98.93	-1.02
ROANOKE, VA	DBP	96.95	- .33	100.80	- .33			106.10	- .33		
	RACK	93.64	- .75	96.83	- .87			101.19	- .81	98.34	- .93
ROCHESTER, N.Y.	DBP	99.73	- .07	103.53	- .07			108.89	- .07		
	RACK	97.05	- .55	100.70	- .55			105.41	- .57	102.53	-3.34
ROSEBURG, OR	DBP	94.55	-1.00	97.85	- .86	104.20		103.80	-1.00		
	RACK	93.35	-1.50	96.60	-1.50			101.30	-2.00		
SACRAMENTO, CA	DBP	94.58	-1.92	97.86	-2.07	104.00	-3.00	103.67	-1.92	102.80	
	RACK	92.38	-1.46	95.80	-1.38	97.50	-2.00	99.66	-1.65	95.54	- .34
SALT LAKE, UT	DBP	101.26	- .04	105.34	- .04	109.13		110.83			
	RACK	98.02	- .02	102.02	- .02	108.22	- .13	106.00		93.72	- .05
SAN ANTONIO, TX	DBP	94.93	-1.15	98.93	-1.15			103.93	-1.15		
	RACK	91.67	- .40	94.67	- .40			99.55	- .25	96.68	- .50
SAN FRANCISCO, CA	DBP	94.13	-1.93	97.46	-2.09	104.00	-3.00	103.21	-1.93	100.90	
	RACK	91.25	-1.15	94.80	-1.15	96.31	-1.50	98.88	-1.37	95.29	- .40
SAN DIEGO, CA	DBP	92.83	-1.40	96.21	-1.63	103.00	-4.00	101.92	-1.40	97.50	
	RACK	90.08	- .80	93.42	- .83	96.25	-1.38	99.00	-1.25	94.98	- .34
SAVANNAH, GA	DBP	98.97	- .58	102.97	- .58			107.97	- .58		
	RACK	93.78	- .41	97.03	- .50			101.13	- .62	97.63	- .37
SCRANTON, PA	DBP	95.63		99.57				104.65			
	RACK	94.08		97.58	- .25			100.10		103.64	
SEATTLE, WA	DBP	92.08	- .83	95.31	-1.00	101.70	-2.00	101.17	- .83	10[illegible].65	
	RACK	90.86	-2.47	94.29	-2.54	101.00	-4.00	99.64	-2.71	96.73	+ .09
SELMA, NC	DBP	98.18	- .88	102.18	- .88			107.68	- .88		
	RACK	93.26	- .55	96.42	- .60			100.46	- .68	98.35	- .86
SIOUX CITY, IA	DBP	99.70	-1.25	103.70	-1.25			107.80	-2.50		
	RACK	93.56	- .50	97.06	- .50			101.47	-1.00	97.46	-1.00
SIOUX FALLS, SD	DBP	99.70	- .30	103.70	- .30			109.20	- .30		
	RACK	95.39	- .50	98.76	- .50			102.91	- .75	99.07	- .69
SPARTANBURG, SC	DBP	97.06	- .50	101.06	- .50			106.46	- .50		
	RACK	93.17	- .48	96.48	- .50			100.76	- .55	98.01	-1.07
SPOKANE, WA	DBP	96.79	- .53	99.82	- .53	100.40	- .70	105.51	- .62	102.30	
	RACK	95.06	- .47	98.38	- .46	103.30		103.48	- .65	96.25	
SPRINGFIELD, MA.	DBP	98.16	- .30	102.23	- .30			107.09	- .27		
	RACK										
ST LOUIS, MO	DBP	96.68	- .36	100.36	- .36	104.00		105.73	- .34		
	RACK	92.83	- .22	96.14	- .34			100.28	- .34	97.15	- .82
STOCKTON, CA	DBP	94.33	-1.92	97.79	-2.07	105.00	-3.00	103.42	-1.92		
	RACK	91.54	-1.99	95.04	-1.99	98.63	-1.52	98.80	-1.98	95.30	- .20
SYRACUSE, NY	DBP	99.51	- .17	103.24	- .17			108.37	- .17		
	RACK	97.48	- .75	101.10	- .75			107.25	-1.00	103.68	-1.50
TAMPA, FL	DBP	97.79	- .48	101.75	- .48			107.03	- .48		
	RACK	93.52	- .43	96.77	- .43			101.09	- .56	98.72	- .68
TOLEDO, OH	DBP	97.35	- .50	101.28	- .50			106.37	- .50		
	RACK	93.92	- .28	97.42	- .28			102.74	- .35	98.76	- .64
TRENTON, NJ.	DBP	95.58	- .17	99.43	- .17			104.82	- .19		
	RACK										
TUCSON, AZ	DBP	93.26	- .57	97.41	- .43			102.91	- .50		
	RACK	93.20	- .71	96.62	- .75	100.45		102.02	-1.50	96.16	
TULSA, OK	DBP	98.28	- .29	102.28	- .29			106.91	- .36		
	RACK	92.64	- .50	95.81	- .58			99.00	- .75	96.10	- .49
UMATILLA, OR	DBP	101.50		104.50				110.50			
	RACK	94.50		98.00				101.50		97.00	+ .50
WASHINGTON, D.C.	DBP	94.41	- .68	98.30	- .68			103.63	- .68		
	RACK	92.44	-1.23	95.73	-1.35			100.15	-1.27	99.56	- .90
WICHITA, KS	DBP	98.45		102.45				108.00			
	RACK	92.38	- .50	95.55	- .58			98.96	- .84	96.11	- .66
WILMINGTON, DE	DBP	92.84	- .55	96.68	- .55			101.99	- .50		
	RACK	93.23		96.73						102.75	
WILMINGTON, NC	DBP	97.63	- .50	101.63	- .50			106.63	- .50		
	RACK	93.20	- .75	96.45	- .75			100.25	-1.15	97.98	- .42
WORCESTER, MA.	DBP	97.66	- .66	101.62	- .66			106.83	- .68		
	RACK										
YONKERS, NY.	DBP	100.79		104.74				110.13			
	RACK										
YORK, PA	DBP	94.76		98.59				103.98			
	RACK	94.00	-1.25	98.00	-1.25			102.00	-1.25	100.00	-4.00
YUMA, AZ	DBP	96.80	- .54	100.03	- .95	104.70	-3.00	105.76	- .54		
	RACK	94.09	- .62	97.71	- .63	103.75		100.55	-1.25		
U. S. AVERAGES	DBP	97.53	- .44	101.43	- .45	103.77	-1.04	106.77	- .44	100.71	- .06
	RACK	93.15	- .52	96.57	- .59	99.43	- .70	101.01	- .60	97.75	- .81

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Mr. **Bedell**. We appreciate your testimony very much, Mr. Lundberg, and particularly appreciate the fact that you have held it under the 10-minute time that we requested.

I am pleased that Mr. Hiler is here. It is good to have you back, Jack. I understand you do not have an opening statement. Do you have some questions of the witness?

Mr. **Hiler**. Why don't you go ahead, Mr. Chairman. I am still reading a little bit more of his testimony.

Mr. **Bedell**. Mr. Lundberg, one of the concerns that we have is the fact that apparently the Department of Energy has pretty well eliminated the data that they have been supplying in the past. I guess we would all feel that if we could reduce the number of Government questionnaires and that sort of thing it would be beneficial. The staff felt there really was no point in having the Department of Energy here because they really had nothing to offer in terms of data at this time. Are you acquainted with what they have done in regard to the data that they supply and so on?

Mr. **Lundberg**. I am not familiar with all of their reports. There was a market share report which is not really equitable with ours, but that was stopped over a year ago. They utilize basically BLS retail price data in their official reports and models.

[See appendix A, exhibit 2.]

I don't think I can make an overall comment on their total information which could have been supplied for your committee.

Mr. **Bedell**. The question I am trying to come to, frankly, is this: Is the Department of Energy at this time negligent in not furnishing the data that is really needed by the industry, and an industry this important, or were they previously supplying data that was readily available from people such as yourself anyway? I assume your position would be it was just more accurate than what they were supplying. That's the basis of my question. Are you in a position to answer that question or not?

Mr. **Lundberg**. Well, they have certainly made an effort to come up with a lot of information; everyone has to admit that. How timely and usable and accurate it is, whether because of the way it's reported to them or the methodologies in regurgitating it, that is something else again.

We are in the business of producing the most timely marketplace information——

Mr. **Bedell**. Yes, you are well known for that.

Mr. **Lundberg**. We don't really concern ourselves except if for some data series, for some historical purpose, we want to look at something else, so we are not really watching all of the EIA statistical activities.

Just a comment on their use of the BLS information. It may be of interest to clear up what happened last week. An increase in gasoline prices was noted as a reason for the CPI going up one-half percent. Actually, even the BLS does not claim there was an actual increase in the price of gasoline in October. They actually noted a 1½-cent drop over September. But their October seasonal factor called for a much greater drop than actually happened. Therefore, when they calculated it, they came up with a gain. Our drop that we measured was 1.03 cents; that is perhaps neither here nor there.

[See appendix B for further discussion of DOE data.]

Mr. BEDELL. Apparently DOE has indicated that they are going to start collecting some new data next year, and apparently they have consulted with a number of major refiners and other people. Have they consulted with you in regard to that?

Mr. LUNDBERG. Are you speaking of the 782 and 783 forms?

Mr. BEDELL. Yes.

Mr. LUNDBERG. They did not consult with us. Of course, they are not bound to. We heard about it at a rather late stage, as did the rest of the private sector petroleum trade press. I also understand that jobbers were not aware of the plans until the concept was pretty far along.

We did participate in the May hearings that the EIA held on the developed questionnaires.

Mr. BEDELL. Mr. Hiler?

Mr. HILER. Thank you, Mr. Chairman.

Mr. Lundberg, your service is quoted quite often in the national media as a good indicator of what is going to be happening to petroleum prices due to various events that take place. What do you project petroleum prices to do for the next year or two?

Mr. LUNDBERG. We, as a rule, do not actually put out projections, except on a very occasional basis, and usually that is a straight line type projection.

What we have on the front page of last week's Letter, which I will submit, is an evening out of prices. They are on a down trend, but the 5-cent increase that should come along, that will probably—well, the increase will, in effect, negate itself over time because of the downtrend. That is just something that could likely happen.

Mr. HILER. With the softer petroleum market and with decontrols we have now, what kinds of trends do you think we can anticipate in the relative market shares of the different distribution systems of petroleum, whether it's through jobbers, or through branded dealers, or the majors? Would you like to comment on that?

Mr. LUNDBERG. The majors have been going down in market share for some time according to our reports. As to what can happen in the future, the jobbers should continue to inch their way upward. They now distribute a majority of the gasoline in the country. Regarding branded dealers, it depends on what kind of operations they have. A conventional lessee dealer doing the repair work has been going by the wayside in great numbers. So the evolution of the marketing system which features a greater concentration of capital and productivity and distribution, that will shape market shares as it has been doing down the line.

Mr. HILER. If I can reiterate what you said, that as that is being shaped, it is actually resulting in the majors having a less market share than——

Mr. LUNDBERG. Partly that is due to the pullouts that they are voluntarily engaging in. Shell was No. 1 not too long ago, but if they're pulling out of New York and elsewhere, then that will certainly cause them to show up as a lower percentage of the market as time goes on.

Mr. **Hiler**. As their market share nationwide goes down, as they pull out and concentrate in other areas, does the danger exist that we begin to have a heavy concentration in particular market areas that exclude the ability of nonmajors to participate in those market areas?

Mr. **Lundberg**. What kind of concentration do you mean? Do you mean to where the majors have pulled back and they are still operating?

Mr. **Hiler**. For example, you mentioned Shell pulled out of New York and I presume——

Mr. **Lundberg**. Portions of that area.

Mr. **Hiler**. I presume that a variety of these pullouts are because they did not have sufficient market penetration to be profitable and they are pulling back into areas where they can have greater profitability and where they are better able to service their customers. Presumably, the capital that was previously going into areas where they weren't as profitable will now be concentrated in the areas where they have been profitable. I would presume they will try to increase their market share within the areas they remain in. I guess that would be a logical conclusion, would it not?

Mr. **Lundberg**. There has been increased competition in the areas where anybody is marketing. With the supply and price situation as it is, there is a heck of a lot of competition.

Mr. **Hiler**. I yield back, Mr. Chairman. Thank you.

Mr. **Bedell**. Mr. Lundberg, you indicated that each individual would be paying less money in taxes than the Government had projected from the increase in the gasoline tax, but you also projected, if I read you correctly, that the revenue received would be greater than what they are projecting. It is kind of hard to understand how, if people are going to pay less per person, we're going to get more than what was projected, unless there was some mistake in the presentation.

Mr. **Lundberg**. Well, it depends upon the data that they use. Apparently, Secretary Lewis and President Reagan's people utilized different mileage and consumption data than we did. With different calculations, it comes out slightly different. Well, $700 million; that's not slight. But the extra billion really has nothing to do with the 5 cents. I can get more specific.

Mr. **Bedell**. The thing I don't understand is, you have just so many people in the United States, and if each of them is going to pay less in taxes, it is hard to understand how the Government is going to collect more in taxes.

Mr. **Lundberg**. Well, it depends on how many people you're counting and how much they are driving. Perhaps that sounds like a contradiction, but hopefully our calculations were not incorrect.

Mr. **Bedell**. It would appear to me that either your calculations are incorrect or the Government's calculations are incorrect.

Mr. **Lundberg**. The calculations by the Government were—I'll stand on that. They were incorrect since they were a little low on the amount of money, and they were a little high on the average payment per motorist.

Mr. **Bedell**. We certainly appreciate your testimony.

Are you going to be around for awhile?

Mr. **Lundberg**. Yes. I am looking forward to attending both days.

Mr. **Bedell**. OK. We may call you back if anything comes up.

We will next have a panel consisting of four people: Vic Rasheed, of the Service Station Dealers of America; Jack Houston, of the Georgia Association of Petroleum Retailers; Rudy Molnar, president of the Pennsylvania Service Station Association; and Ray Wesley of Audubon, Pa. Are all of you here?

Mr. **Rasheed**. Could John Kulik sit in place of Mr. Wesley? He is the representative of that association.

Mr. **Bedell**. Of course. Mr. Rasheed, we are glad to have you back again here. You are one of our most steady customers when we have hearings such as this.

PANEL CONSISTING OF VIC RASHEED; JACK W. HOUSTON; JOHN KULIK; AND RUDY MOLNAR

TESTIMONY OF VIC RASHEED, EXECUTIVE DIRECTOR, SERVICE STATION DEALERS OF AMERICA

Mr. **Rasheed**. Thank you, Mr. Chairman. It is a pleasure to be here. I have very fond memories of being in your company in the past, and I think we introduced gasohol to this great city of Washington, as a matter of fact.

I would like to thank you for inviting us here today. My name is Vic Rasheed, and I am executive director of the Service Station Dealers of America.

The Service Station Dealers of America is extremely concerned about the future of its independent retail gasoline dealers across the United States because of the events which have shaken this industry since the decontrol of gasoline in January 1981.

The service station dealer today is offering, to the best of his ability, a public service essential to motorists. At the same time he is being tossed about like a straw in the wind by the unprecedented pressures of his suppliers to sell more gasoline.

Oil companies are using every tactic known to this industry, including deception and threats, to force dealers to gasoline sales. Some of these marketing practices can only be described as vicious, as refiners fight to retain their share of a declining gas market. In this industry state of upheaval, the main victim is the retail dealer.

With the lifting of controls, retail dealers are now virtually at the mercy of their suppliers. Their only protection against termination or nonrenewal is that provided by the Petroleum Marketing Practices Act.

However, this provides no restraints against the supplier using rent increases to intimidate a dealer to pump more gas, or force him out of business if he doesn't. Under PMPA, suppliers are now writing minimum gallonage requirements into their leases, inserting 24-hour operation clauses, and are using the common threat of closing a dealer's location if he does not pump the prescribed amount of gasoline.

These are just some of the pressures being used against dealers as oil companies engage in a fierce battle to retain their share of a shrinking gasoline market and, at the same time, reduce their investment. This has put tremendous pressure on retail dealers and decimated their numbers.

For example, James Kowal, sales manager for Arco, told a Senate Small Business Subcommittee hearing in Chicago in October.

> In the last 10 years, we have sold over 4,500 of our service station properties, sold a major refinery, reduced our work force in refining-distribution-sales from 12,600 to 7,300, reduced our marketing area from 30 States to 17, and maintained our sales volume.

We had believed that the worst of the storm was over. Now we believe that the rate of attrition which has eliminated 80,000 service stations in the past 10 years will continue.

Hastening the process are new moves by oil companies toward replacing their independent dealers with company operations. For example, as you will hear from other witnesses, Texaco has entered the Atlanta market with 40 new company-operated pumpers. Gulf has eliminated 50 percent of its dealers in Mobile, Ala., and has replaced them with several company-operated pumpers and is building more. In South Carolina, Hess has not put a new dealer into a station since 1973, and has recently eliminated several remaining dealers and replaced them with company operations.

In New Mexico, major oil companies have virtually abandoned the State except for Albuquerque. Texaco has converted half of its former dealers there to company operation. During the past year Texaco's company operations retail prices have dipped as much as 2 cents a gallon below their dealers' tankwagon prices, and they continue to market now at six-tenths of a cent above the dealers' wholesale. The Texaco dealer must pay a 3-percent processing fee on his credit card sales, which is about 4 cents a gallon, plus his rent, and cannot compete with his supplier.

The remaining Texaco dealers have been told that Texaco does not intend to continue the lessee stations, and it will convert them to company operations or sell them.

There is a very solid reason for the oil companies very determined push for gasoline sales, and that is the increased profitability of gasoline.

In 1974, for example, refiners made about 9 cents a gallon gross profit on a gallon of gasoline. That figure has since exceeded 30 cents a gallon. By comparison, the service station dealer's margin, which was 10.2 cents in 1974, has declined to about 7 cents, or even lower, with much of his product sold at less than 3 cents a gallon margin of profit. Since then, the wholesale price of gasoline has increased almost 400 percent.

It is obvious that dealers cannot compete with direct company operations, particularly when the refiner is also his supplier, who determines the price of his product, and is also his landlord who sets the amount of rent that he must pay, and has the power to evict him for a variety of reasons.

In 1974, the Maryland General Assembly decided that in order to preserve competition in the retail market and full-service facilities for the safety of its motorists, it should pass a retail divorcement law banning oil companies from operating retail service stations. The District of Columbia followed, as did Delaware and Connecticut. Recently, Pennsylvania came within one vote of joining them. Pennsylvania is almost assured of passing that law next year, Mr. Chairman.

Whenever there are company operations, these are usually the gas-only type, self-serve pumpers, because this is the only type operation an oil company wants to operate. However, by eliminating dealers, they would also eliminate service from service stations, since they are no longer interested in repairing motorists' flat tires, leaky radiator hoses, broken fan belts and other emergency services.

The declining number of service stations has caused deep concern in some State legislatures because of the threat it poses to the highway safety of motorists, particularly women and the elderly. As a result, Maryland and the District of Columbia have laws which prohibit the conversion of an existing full-service station to gas-only outlets.

Even some oil companies have now begun to acknowledge that with the declining gasoline market, service stations can no longer make it on gasoline alone, but need to take advantage of the growing demand for automobile service to sustain their operations.

Oil companies have discovered that by charging their dealers exorbitant rents they can, in effect, add several cents per gallon to the wholesale price of their product and then force their dealers to be more productive in order to pay the higher rents. For example, BP, in its company operations in Maryland, reached a rental high of some $12,000 a month until the number of its dealers, forced out of their stations grew to such a level that BP had to reduce the rents. Currently Exxon, in the midst of a major rebuilding program in the Maryland and Washington areas is charging dealers up to $8,000 a month for some of its newly rebuilt locations. Other stories of exorbitant rents are rampant in the service stations community.

In South Carolina earlier this year, a Federal judge asked an attorney for Hess how much a dealer could be gouged on his rent by his company before it became bad faith. The judge concluded that Hess had indeed raised the rents on its South Carolina dealers in an effort to eliminate them. I think that what we're saying is that rents very definitely can be used for that purpose.

More recently, Arco dealers who have been trying to hang on to their businesses which they have operated for many years, have also found themselves victims of huge rents. There is no question, Mr. Chairman, that unless something is done to force oil companies to charge their dealers a rent which must be reasonable and consistent with the business that he does, then many of our dealers will be forced into bankruptcy.

The oil companies have found that by mathematically manipulating rents, they can in effect become a silent partner of any dealer and end up with most of what should be the dealer's legitimate profits.

Oil companies have for many years practiced an exchange of products between themselves. They purchase products from each other's refineries in strategic locations to shorten the line of supply to their retail outlets. The product which they sell under their brand, however, comes directly from their competitors' tanks quite often, and is sold as their own brand. This has been perfectly acceptable. The only standards adhered to are the octane ratings of the product exchanged to maintain quality.

A witness once told a congressional committee investigating the fundability of gasoline several years ago, the product which enters a pipeline at its source is not necessarily the same product delivered to a customer at its destination. He said that it is similar to a bank, whereby a depositor makes a deposit of a dollar but does not get the same dollar back when he withdraws his deposit.

We have no quarrel with these practices if they are applied uniformly to service station dealers. Today we have seen dealers who have been forced by the high, uncompetitive wholesale prices of their supplier, and to some extent, by the high rents being charged, being forced to purchase cheaper product on the open market to be competitive. However, under the Petroleum Marketing Practices Act, as it is currently written, a dealer who purchases a product from any source other than his supplier can be charged with adulteration of product if he commingles it and sells it under his supplier's trademark. This is grounds for termination. However, this is discriminatory when compared with what has become standard practice in the rest of the industry.

Distributors who deal with several suppliers and have a network of retail outlets selling under one brand also purchase gasoline on the open market at the best price from any source and sell it under their own brand.

We feel that today, to give the motorist the best value for his money, that this standard should be extended to the branded dealer. His own supplier would then have to be competitive with other sources of supply.

Today, many dealers have debranded one or two products in their stations, so that they can purchase cheaper product on the open market and sell it as unbranded product to their customers at a cheaper price.

This has aroused the ire and consternation of their branded suppliers. There are two reasons for this: One is that the oil companies power to hold the dealer as a captive customer is diminished, and two, the fence that the oil companies have built around their branded dealers to protect an exclusive, guaranteed market for their own product at a premium price is lost.

As a result, the oil companies have begun implementing a new minimum gallonage clause in their marketing agreements which binds the dealers and also jobbers to purchase a certain amount of branded products from them at the risk of termination of their marketing agreements.

Gulf's new lease requires dealers to pump 8 percent of the previous year's total gallonage each month, or about the same gallonage as the previous year, during a period of declining sales.

In the southeastern part of the country, Exxon dealers have been notified that the company intends to enforce these minimums and will consider termination if they are not fulfilled.

Service station dealers are also concerned that the expected new 5 cent per gallon Federal tax on gasoline will be a major burden to them at a time when their margin of profit in many cases is less than the new tax being imposed. The dealers traditionally pay the fuel tax in advance, when they purchase their gas at wholesale from their supplier. The new tax, at 9 cents a gallon, will result in dealers paying approximately $720 on each tanker load of gasoline upon delivery. The dealer must pay this money in cash, and will not be reimbursed until he sells it. In the meantime, he runs the risk of any loss of that money due to robbery, holdup, shortages, and product shrinkage.

The new tax will penalize service station dealers also because many oil companies are now charging dealers a 3-percent processing fee on credit card sales. Many dealers sell about half of their product on oil company credit cards. If the 3-percent charge is applied to the Federal tax paid by the average 50,000 gallon per month station, it would cost the dealer $810 per year if half of his sales were made on the company credit card. The average gallonage in the Washington area, incidentally, is almost double that figure. So it is conceivable that dealers could be paying over $1,500 a year to collect the Federal tax, and that is for the privilege of being an involuntary tax collector.

The dealer could also lose hundreds of gallons of gasoline on which the tax has been paid from shrinkage caused by the contraction of gasoline when it is delivered into the lower temperature of below-ground storage tanks.

The States of Maryland, Georgia, Ohio, Texas, and Arizona have a collection allowance for their dealers to compensate them. We believe that a Federal allowance of 2 percent of the Federal tax collected by dealers would defray these expenses. This would amount to $14 of the $720 collected on each tanker load of gasoline delivered to dealers. The only other alternative would be to prohibit the processing fee to be charged on the Federal tax.

I hope I didn't exceed my time, Mr. Chairman. That does conclude my remarks.

Mr. **Bedell**. You did by about 2 or 3 minutes.

If it is all right, we will go ahead with the whole panel before we have questions. Your attachments will be entered in the record.

Mr. **Rasheed**. Thank you, sir.

[Additional submissions of Mr. Rasheed follow:]

Dan Hill's Arco,
Nashua, N.H., November 19,1982.

New Hampshire Gasoline Retail Association.

Mr. E. J. Bryan: In the past I have told you about the heavy handed techniques of Arco. Frankly, Mr. Bryan, Arco has outdone themselves!

Four years ago, I went into business as an Arco dealer, at that time my rent was $523.00 per month. When the rent ceilings were lifted my rent went up to $800.00 per month. The next increase came in the Spring of 1982, my rent increased to $1,100.00 per month.

As you know I was forced to move my entire business at my own expense in May of 1982 to another Arco station across town. This came about because I did not want to operate my station on Amherst St. 24 hrs. per day 7 days a week. My reason for rejecting 24 hrs. are valid reasons.

(1) The cost of labor, lights, heat would not justify themselves.

(2) The station did not have self service equipment, and they would not agree to install it.

(3) There are at least 3 other stations on Amherst St. that are opened 24 hrs.

(4) No diesel fuel for trucks or credit cards for travelers.

That is why I chose to move by business. The rent at the new location was $1,300.00 per month.

As if that was not enough! Arco came to my new station in August to talk me into signing a contract for self service equipment. They said it would give me much better control over my gasoline. It eliminates shortage and your overage, drive off and clocking back the pumps. Not to mention the inventory of gas always at your fingertips.

I knew they were right, shortage drive off and customers clocking back the pumps are a big problem. I decided to sign the contract I felt I could handle $1,800.00 rent.

On Sept. 27, 1982 I received a certified letter from Arco, informing me that in 30 days my rent was going up. This increase was an additional $600.00 per month.

My rent will cost me $2,400.00 per month once the self serve equipment is installed.

I asked my district manager and my oil rep. why they did not tell me about the rent increase before I signed the self service equipment contract. They said they did not know about it. Yet they already knew that in January of 1983 there will be another rent increase. This one is going to be called a rent re-evaluation of each facility.

I told them that under the circumstances I no longer wanted the self service equipment, my reason I cannot afford $2,400.00 per mo. Their answer was SORRY! The contract has been signed and manage!

When Arco blew up their credit cards, they also blew up their dealers profit margin.

I am selling over 100,000 gallons of gas per month, and making less money than when I was selling 45,000 gallons of gas per month a year ago.

Arco has become very greedy and it seems to me that it is only going to get worse. In my opinion Arco wants only company operated stations, such as their AM-PM franchise or their award tune-up or MPG franchise.

I do have a very good reason for making this statement. In October of 1982, I was approached by my oil rep and the manager of the M.P.G. (new version of the award tune up) franchise, they had another set of contracts with my name on them and again I was told by the award tune up manager Bob Milliken, that they were going to do this thing with me or without me. Milliken warned me that my rent was going to go out of sight if I did not go along with this program.

This franchise was offered to me in May of 1981 when I was on Amherst St. Bob Milliken has come to my house and upset my wife and my daughters age 10 and 11. When I refused to go with the program that is when all the harassing started. I would receive a telephone call or a visit from the district manager and oil rep. at least once a week, the conversation would go like this. "Hi Dan, I hope you realize that when your lease is up in November 1982 that you will have to operate 24 hours a day 7 days a week and if you don't like it you can get the F—— out!

I told them that they would have to make some changes to the station to be able to run 24 hours. The only thing they said was, you operate 24 hours as is. We will not install the self service equipment without the franchise contract.

This type of harassment went on from May 1981-April 1982. The only reason that it stopped was because they had forced another dealer out of his station on 119 E. Hollis St.

After much deliberation on Arco's part, they offered me the station on 119 E. Hollis St., the hours of operation was 6 A.M. to 10 P.M., I felt I could live with those hours so I took it.

The station was a disaster. It needed scrub and paint; replace broken glass. Arco said that there was no money to do this type of maintenance. I decided to clean up the station myself because I could not work under these dirty conditions. Just to paint the interior and replace broken glass it cost me cover $3,500.00. Arco gave me only 10 days to do all of this. I moved my entire business and cleaned up another Arco station in 10 days. It was very difficult for me, I suffered a great loss of business. I was not able to advertise at my old location for more than the 10 days. I had to move. Many of my customers thought that I had gone out of business.

But to get them off my back I felt it was worth all what I went thru. My rep and district manager lead me to believe that I would be left alone at this new location. I moved to E. Hollis St. on May 20, 1982. June and July were quiet.

In August the district manager and rep were complaining that my gas prices were to high. I was one cent more than Main St. company operated AM-PM store. They told me that if I did not sell enough gas, that they would close the station. They warned me their 12 stations in Mass had been closed and it wouldn't phase them to make it 13 stations.

At that time my volume had already exceeded the volume that had been put thru that station's history, but it still wasn't enough. So again I gave into Arco's heavy handed techniques. I dropped my price. The volume has increased to over 100,000 gallons per month. I am working harder and making less money. Arco is the one who is making the money.

The Amherst St. station was taken over by another dealer on May 22, 1982 he opened his doors for business. Arco is presently installing self service equipment at this location without the award tune up franchise, and as of this date, November 18, 1982 his hours are not 24 hours per day.

Mr. Bryan, I am scared to death that Arco is trying to force me out of business. I have looked into other buildings, but at this time I just cannot afford another move.

I wish Arco would have been straight with me four years ago. They promised me that the only thing Arco was interested in was selling gas. What I did in my back shop did not interest them at all. As a matter of fact they seemed pleased every time I purchased a piece of equipment. My repair business grew at a very rapid pace. I took pride in my business, I can offer my customers anything from a state inspection, complete brake job, front end alignment, tune up, and their car never has to leave our premises. I re-invested my money into my business to be able to do the best job for my customers.

Now Arco wants the MPG award tune up franchise at my location. This would mean I would have to sell all of my equipment and give up being a full service garage, I couldn't even change a tire, inspect a car or do what I built my reputation on Front End Alignments. I have a number of body shops and other garages that send me their alignments especially if there is a problem with the front end.

I have worked hard to become the best mechanic that I can be. My motto is a satified customer will always be back!

Arco's motto is each customer is $48.95 repair ticket. Arco gets $40.95 I get $8.00 for doing the job.

If I had known Arco was going to be interested in my back shop I would never have gone into the business as an Arco dealer.

Sincerely, Daniel Hill.

SERVICE STATION DEALERS ASSOCIATION
OF NEW MEXICO, INC.,
Pojoaque, N. Mex., December 14, 1981.

ALL MEMBERS AND PROSPECTIVE MEMBERS: The article reprinted below appeared in Oil Express on November 16, 1981. The article details Texaco's attempt to move into direct retail operations. The key item is that Texaco sets the retail prices, mostly at levels too low for lessee dealers to compete with.

As you know, S. 326, The Small Business Motor Fuel Marketer Preservation Act of 1981 will prevent the major oil companies from continuing to integrate forward into retailing. In an effort to document the seriousness of this problem for our legislators, each of you is being asked to fill out the enclosed survey and return it to the office as soon as possible.

Any and all examples of unfair supplier competition should be reported so that our legislators are made aware that Divorcement and Open Supply as will be provided for by S. 326 will restore fair competition and small business opportunities to the retail petroleum industry.

If you haven't already, please write to our Senators and tell them specifically of refiner and jobber efforts preventing you from being able to compete for the retail trade.

If you haven't yet joined SSDANM, what are you waiting for?

MORE DEALERS RUNNING TEXACO UNITS

Texaco is now using dealers and jobbers to manage company outlets in Maine, Albuquerque, Atlanta and Phoenix, and one Texaco source guessed there are as many as 100 such operations nationwide, up from one this summer.

In Albuquerque, on dealer operates three stations—one "gas" only, one C-store and one full-serve. He receives $6.90/hr. to manage the units, says one area dealer. From that, he hires one attendant per shift and supervises the station operation. Texaco sets prices.

Texaco confirms the "contractor-operator" arrangement but would not comment on the fee. All are remodelled units. Texaco installed the C-store equipment and takes 10 percent of the gross of inside sales. It charges a monthly fee for service bays, depending on location, Texaco confirms.

Another Albuquerque dealer runs one station with a second soon to open, Texaco says. Both were former dealers.

Meanwhile, Texaco is expanding use of professional contractor-operator firms to manage other company outlets. In the past year, Texaco has opened six remodeled company stores in Denver, under the management of Manpower, Inc.

Fewer than 1 percent of Texaco's 24,000 branded stations are contractor-operated, and the majority of those are operated by professional management companies, Texaco says.

Supplier competition.—Having to complete with your supplier has become a way of life for most New Mexico dealers. A year ago we conducted a survey concerning this topic. Although the response was limited (only 15 dealers returned the questionnaire) every respondent reported that he could buy gas at a local competitor's station for less than the dealer's DTW price. Oftentimes the dealer's supplier was retailing for below the DTW price. One Shell dealer reported that his jobber retailed product for a full 60 less than the DTW price. Today it is not uncommon for jobber supplied dealers to be paying DTW prices of $1.22/gal and more while having to compete with independents, chain marketers, and jobbers who retail product below cost in selected markets for $1.10/gal and less. Volume losses and dealer failures are excessive as a result.

Company operations.—Only Texaco, Exxon, and Chevron still supply New Mexico dealers direct. All other major oil companies market through branded jobbers. Direct supplied dealers are almost all located in Albuquerque. Only a handful of stations outside the Albuquerque area are serviced directly by refiners.

In Albuquerque, Chevron and Exxon maintain a few company-ops, but Texaco has in the last year converted half its former dealer lessee stations to company ops. Their marketing practices have been extremely unfair and predatory in nature. Among Texaco's unfair practices are:

Company operated stations retail gas for prices impossible for lessee dealers to profitably compete with. Texaco is presently retailing gas in company stores for $1.159/gal. as compared with its DTW price of $1.153/gal. The rebate program will approximately offset the credit card surcharge leaving dealers with a ½ cent per gallon margin if they attempt to compete head on with the company ops.

Within the last year Texaco's company op retain price has dippled as much as 2 cent/gal below the DTW price. This practice stopped after we called a TV station to televise a company station across the street from a dealder station where the company station featured retail prices below the dealer's DTW price.

Remaining dealers have been told that Texaco does not intend to continue lessee stations in Albuquerque. Vacated stations will either be sold or converted to company operated status. At least one dealer was heavily pressured at lease renewal time to sign a mutual cancellation agreement and become a "manager" for a salary operated C-store operation. After this dealer stated his refusal to convert to salary operated status Texaco sent a survey crew to his station for two days, while reps told the dealer they were surveying for leveling and reconstruction as a C-store, suggesting that the dealer ought to change his mind. Steadfast refusal, and defensive actions such as tape recording, photographs, and legal threats enabled the dealer to get his lease renewed, without further pressure from Texaco reps.

Exxon and Chevron company stores, while few in number compared to dealer stations, also post retail prices within a penny or two of DTW prices, effectively giving these refiners an ability to strongly "suggest" retail prices to dealers.

Discriminatory pricing and other unfair marketing practices.—Approximately 80–90% of New Mexco stations are supplied by jobbers. Consequently the bulk of marketing abuses can be attributed to jobbers. Additionally, it should be noted that chain marketers and independent refiners have demonstrated long term policies of below cost predatory marketing practices.

Included in what I would consider unfair marketing practices:

Jobbers supplied dealers pay DTW prices averaging 7 cent to 15 cent higher than those paid by refiner supplied dealers. Jobbers in some of the rural areas of the State operate with rack to retail margins of 20 cent per gallon and more. DTW prices in these areas reflect discounts from retail of only 3 to 5 cent per gallon. In other words, jobbers are able to make wholesale margins of 10 cent to 20 cent per gallon, while dealers struggle with margins of 5 cent or less in an attempt to compete with jobber direct operations.

Many jobbers have come up with self serving "discount" programs representing borderline attempts to fix prices, and give preferential treatment to cooperating dealers. A typical program offers a dealer a fixed margin, usually 2 cent to 4 cent, in return for the jobbers promise to maintain a competitive retail price for the dealer. In every case of this type that I have come across the jobber margin is usually 10 cent/gal or more while the dealder pays all the usual costs of doing a retail business. Dealers who refuse to go along with these pricing programs pay significantly higher DTW prices.

During the rebate period last year jobbers neither offered or informed dealers of the rebate programs. I know of only one branded jobber in the State that offered his dealers the rebate program as offered by the refiner. Jobbers were able to increase both wholesale and retail margins by "pocketing" all rebates that might otherwise have been passed on to dealers. I believe that this jobber abuse of the rebate program has resulted in all present rebate programs being offered to refiner supplied dealers only. This has resulted in jobber supplied dealers being placed at an extreme competitive disadvantage resulting from no rebates plus extra high DTW prices in comparison to refiner supplied dealers. Jobber supplied dealers must put up with angry consumers who cannot understand why a similar branded product is so much more expensive at their stations when compared with refiner supplied dealers and jobber salary operated stations.

Below cost selling is an extreme problem in many of the State's markets where many stations are still dealer operated. Chain marketers offer retail prices that are clearly below acquisition cost, (rack + freight), in localities where branded dealers maintain significant market shares. Below cost losses are compensated for in less competitive rural markets by rack to retail margins of 15 cent to 25 cent and more. Branded jobbers in competitive areas are often able to offer comparable prices by raising DTW prices and reducing retail prices in their salary operated stations, thereby forcing dealers to subsidize their own destruction. It is very clear that below cost retail prices being enjoyed by consumers in populated competitive areas of New Mexico will be short lived, ending when the predatory pricing yields desired market shares and diminished levels of competition.

The price differentials that result from these marketing practices are sometimes unimaginable. For instance, one distributor, Bell Oil Co, offered prices as low as $1.019 in Santa Fe, the State capital, while simultaneously selling gasoline in at least two other localities for $1.349. The lowest available rack price at the time was $1.01 FOB. Several chain marketers and independent refiners engage in this type of marketing throughout the State.

Mr. BEDELL. Next we will hear from Jack Houston, who is executive director of the Georgia Association of Petroleum Retailers.

TESTIMONY OF JACK W. HOUSTON, EXECUTIVE DIRECTOR, GEORGIA ASSOCIATION OF PETROLEUM RETAILERS

Mr. HOUSTON. Thank you, Mr. Chairman. Indeed, it is a pleasure to be back before your committee.

I would ask the chairman for a point of information before I proceed. If I may, I will just hit the high spots and ask that the full statement be entered in the record. Or, if you wish, I will present the entire statement.

Mr. BEDELL. We would much prefer you summarize, Mr. Houston.

Mr. HOUSTON. Thank you, Mr. Chairman. I think it would save us both some time. I hope you will take note of certain key statements that I have made concerning you personally in my statement, which I will not repeat at this time.

Mr. Chairman, Texaco, Citco, Exxon, Crown, Mobil, Union 76, and Gulf in the Atlanta area, and other refiner-wholesaler-retailers operating in other marketing areas around this Nation, are continuing anticompetitive marketing practices which substantially lessen retail competition. These companies committed to doing just this are eliminating and destroying the competition and they are destroying their competitors. The hopes and the dreams, Mr. Chairman, of a lifetime of these retailers, who are left in the market system today, are fading away very fast. The question they keep asking those of us who represent them is, "Is help coming soon?" We can't answer that question. We don't know. Only the Congress knows whether we will have any relief.

To highlight to you, Mr. Chairman, and your committee, and to update the record about changes in the marketplace that have taken place since decontrol, here is what is happening:

There has been a continuation of the growth in company-operated stations. There has been an implementation of a new charge, a charge which has been openly stated to be a charge which is for the cost of credit for the consumer, imposed on the retailer, who has nothing to do with that consumer's credit other than the use of the card itself. He is already paying a processing cost in the price of his gasoline, openly stated in previous testimony years and years ago before this Congress, a cost that is detrimental to the dealers and a cost which the company-operated stations are not covering in their own retail stations today, if you look at the retail price compared to the wholesale prices charged by those majors to their dealer stations.

There has been a sharp rise in the rental rates, and a renewed demand for all of the commonly reserved business practices which a dealer has to control in order to manage his business. Things like hours of operation, how many days a week, whether or not he is going to give away all of his margin of profit in order just to reach a gallonage figure, or whether he will make enough money to try and pay his bills and to survive with his family. There is pressure in even returning to buying the company tires, batteries, and accessories. The whole gamut of a continued pressure is being applied upon the independent lessee-dealer and open dealer to return to a status of economic serf, as was defined by the Federal Trade Commission in its findings after extensive hearings in 1965.

There has been a return to one-year leases, and a return to a change in the credit terms. Instead of a next-load basis, they moved it up and pay c.o.d. on delivery. That increased the cash flow demands and put the dealer under further economic strain.

Mr. Chairman, I want to call to your attention that several months ago, the American Petroleum Institute prepared certain information about the issues of anticompetitive marketing that we complained about. I prepared a response to that on August 16, 1982, and I have included in my written testimony the details concerning that.

The reason I mention that in here is that, although the American Petroleum Institute, or any one of those major companies represented by that institute, are refusing to acknowledge and cope with and respond to you and other Members of Congress to what is truly happening in the marketplace, to a justification for their actions to compete against their dealers, selling below the actual dealer tankwagon price. Though the companies refuse to look at this, it does not change or alter the fact that our dealers cannot survive in the marketplace unless this Congress does something about it. Our only hope is for congressional action.

Mr. Chairman, we looked closely at the Texaco situation in the Atlanta market. Some 16 or 17 months ago I did extensive research on the then 19 company-operated stations in Atlanta, and as a followup now, with the time factor, I asked my people to go to 20 stations and give me pricing information of the company Texaco pumpers in the Atlanta market. That analysis is contained in my written statement in more detail.

There are certain things that should not be ignored in that analysis. Texaco does control the retail price of all those stations. Texaco pays a commission or a flat rate per hour for the operation of those stations by managers, or by an independent agent who serves as a manager. Of the 20 Texaco pumpers, 85 percent were selling regular leaded gasoline 0.4 to 3.3 cent a gallon below Texaco's lessee dealers' tankwagon prices, and the statement has attached copies of invoices to show that information to be factual.

Of the 20 Texaco stations, 40 percent were selling regular unleaded gasoline at retail 0.4 of a cent to 1.5 cents per gallon below dealer tankwagon price, and another 40 percent were selling at 1.4 to 2.3 above the dealer tankwagon price. Of the 20 pumpers, 60 percent were selling premium, the super unleaded gasoline, at retail from 3.1 to 5 cents a gallon above dealer tankwagon, and another 25 percent 5 to 8 cents above.

I say all this to emphasize to you that after you analyze the cost of what Texaco is doing out there and comparing it to these actual prices, you can quickly see, if you examine those factors which I have included in this written statement, to the point where you see the chart and the analysis where with regular leaded gasoline I have calculated the cost of Texaco's dealer tankwagon price, at $1.10 for regular leaded, with a rent fixed at 5 cents a gallon, which I have explained in the prepared statement how it was calculated. It is Texaco's own figures, the surcharge cost on a per-gallon average, and an hourly contract rate cost, which is Texaco's own rates, comes to a Texaco estimated cost, without insurance, without utilities, without other costs of doing business included, at $1.2255.

You compare that to the actual record of the analysis of on-site inspection we made a few days ago, we find Texaco's average retail prices at the 20 locations on regular leaded was $1.095, 13 cents below their cost. Texaco's lowest retail price was $1.069, 15½ cents a gallon below the cost. Texaco's highest retail price was $1.127 at 9.8 cents below dealer tankwagon cost, below the cost of operating those Texaco stations, without considering all the costs.

I have done the same thing for the other two grades of gasoline to indicate that the matter is serious, across the board. These company stations are destroying not only the Texaco dealers in those areas. In fact, most of them are already destroyed in Atlanta. There are very few that you can find. There are independent lessee dealers or open dealers who are left. But it is destroying the other brand of dealers. They, too, cannot compete. I have enclosed copies of several invoices showing those dealers wholesale prices, and they are very comparable to Texaco as to what's happening in the market.

Mr. Chairman, I submit to you that unless this Congress acts, and possibly unless this committee is willing to proceed in 1983, that we are going to see an absolute destruction of competition in retailing as we have known it over the years, a free enterprise system, where competition is supposed to exist on the basis of efficiency, the ability to manage, the ability to serve the public, and the actual service of that public. We're going to see that destroyed in the gasoline industry unless something is done.

I ask you, Mr. Chairman, and this committee to proceed early in 1983 to move with a piece of legislation, perhaps similar to the 1981 version, and let us proceed to find a solution to this problem.

I thank you very much, and I would be glad to respond to any questions.

[Mr. Houston's prepared statement and attachments follow:]

PREPARED STATEMENT OF JACK W. HOUSTON, EXECUTIVE DIRECTOR, GEORGIA ASSOCIATION OF PETROLEUM RETAILERS

Jack W. Houston is also the Chairman of the Government Affairs Committee of Service Station Dealers of America. The Georgia Association of Petroleum Retailers represents 1,200 Member gasoline service station dealers located throughout 156 Counties of Georgia's 159 counties. It was organized in 1930's and incorporated in September 1941. The Executive Director has represented the members continuously the past twenty-seven (27) years.

Mr. Houston is a co-author of the 1980 copyrighted work entitled "The Case for Legislative Relief From the Impending Destruction of Small Business and Competition in the Gasoline Industry". (See Attachment No. 1)

Mr. Chairman, Texaco, Citgo, Exxon, Crown, Mobil, Union 76, Gulf in the Atlanta area and other refiner-wholesaler-retailers operating in other marketing areas around this Nation are continuing anticompetitive marketing practices which substantially lessen competition at retail. Commitment of these continuing acts by these economic giants smacks of deliberate effort to restrain or to destroy competition and competitors, the independent branded and unbranded retail dealers of this Nation.

Those of us who represent service station dealers have repeatedly told the facts about what's happening in our segment of the oil industry. The untimely demise of tens of thousands of dealers over the past ten years, dealers who could not survive shameful treatment at the hands of "Big Oil", is an unpleasant reminder that the wheels of justice grind slowly.

You, Mr. Chairman, have led a worthy and commendable effort to bring the issues to the attention of Congress. You have offered proposed legislation to fairly provide structural as well as behavioral mandates that would preserve competition among many in gasoline retailing. Preserving competition in the gasoline industry preserves those benefits which accrue to the consumer as a result of that competition.

Through your efforts have not produced tangible results to date, we want you to know that you are respected and appreciated by some of the finest people in this country, the service station dealers of Georgia and of the Nation.

But, Mr. Chairman, the hopes and dreams of a life-time of many of the remaining are fading. The question they keep asking is: Will help come soon? How much longer can the dealers keep the faith and keep on struggling against such grossly anticompetitive conditions? I frankly do not know. But, many obviously will not make it even if the unfairness were stopped today. Why? Because they are in a state of ruin, economic death of their businesses is certain.

I have said this to reemphasize the seriousness of the problems faced by dealers at the hands of oil companies and their (wholesalers) jobbers. I am here today to ask you to move with deliberate speed with the convening of the 98th Congress to introduce appropriate legislation to provide relief from anticompetitive and unfair marketing practices . . . for dealers and the public interest.

I am submitting for the record a copy of the "20 Questions & Answers" that was especially prepared to support the Small Business Motor Fuel Marketer Preservation Act of 1981 which you introduced to the 97th Congress. A copy of a revised edition entitled "28 Questions & Answers" prepared to support the companion bill, S. 326, in early 1982 is also enclosed for the record. (See Attachments 2 and 3).

These earlier statements offered in support of the previously considered legislation dealing with structural and behavioral changes if it had been enacted would have, in my opinion, preserved competition for consumers of motor fuels and preserved competitive opportunities for small businesses.

To highlight and to update the record about changes in the market place that have taken place since decontrol, here is what has happened:

(1) Continued growth in the number of refiner-wholesaler company-operated retail outlets; which outlets continue to engage in anticompetitive marketing practices which lessen competition.

(2) Implementation of credit card surcharges, a 3 percent or 4 percent of sales on oil company credit card sales, a charge wrongfully imposed upon the dealer further crippling the dealer's ability to survive against company stores that do not appear to be covering the new cost in posted retail prices.

(3) Sharply rising property rentals while the refiner-wholesaler company-operated retail outlets do not pass through comparable rent in their retail prices to the consumers.

(4) Renewed demands from refiners for: (a) Longer hours of operation; (b) Seven day week operation; (c) Enforcement minimum gallonage sales; (d) Pressure to meet competitive prices by reducing dealer margins; (e) Pressure to increase number of gallons sold (minimum gallonage); (f) Dealers to purchase less desirable properties (best properties being kept by refiners); and (g) Dealers to purchase all TBA from the refiner-wholesaler.

(5) Return in some cases to one-year leases.

(6) Change of credit terms. Increased financial burden on dealers for required cash flow by requiring deposits and in some cases C.O.D. to replace next load payment basis.

(7) For dealers to sell gasoline at or below cost and depend upon services and other product sales for profits. This is a return to pre-embargo days.

Mr. Chairman, some months ago the American Petroleum Institute (API) produced a research study (Research Study No. 026) concerning the anticompetitive marketing practices about which we complain. That report, I believe, questions the intelligence of members of the Congress. On August 16, 1982 I prepared a response entitled "Overview—No Theory Or Hypothesis/Just Plain Facts". A copy is attached for the record. (See Attachment No. 4)

Neither API nor any one of the major oil companies appear willing to present a head-on response to the gut issue that marketing practices of the majors are in fact lessening competition and destroying competitors. But refusing to face up to the real issue does not alter the fact that small business and competition in gasoline marketing cannot survive unless fairness is restored. You, Mr. Chairman, and your colleagues, must decide by taking action or by your inaction if competition and small business opportunities will be preserved in the gasoline industry.

Mr. Chairman, we found the following conditions upon visiting all known locations (20 of them) where Texaco is currently "The Retailer" in Texaco's new pumper type outlets in the Atlanta area. We understand there are at least 10 additional locations. We are unable to discover their street locations for an on-site visit within the time limit we had. Our earlier report filed on Texaco's aggressive moves to retailing in Atlanta are reconfirmed in the second finding more than a year later.

We found that:

(1) Texaco controls the retail price at all twenty (20) stations.

(2) Texaco pays a commission or a flat rate per hour for contract labor to manage the retail gasoline pumps.

(3) Of the twenty (20) Texaco pumpers, 85 percent were selling regular leaded gasoline at retail .4 cents to 3.3 cents per gallon below Texaco's lessee dealers tankwagon (wholesale) price (DTW).

(4) Of the twenty (20), 40 percent were selling regular (lead-free) unleaded gasoline at retail .4 cents to [illegible].5 cents per gallon below DTW; Another 40 percent were selling at retail from 1.[illegible] cents to 2.3 cents above DTW.

(5) Of the twenty (20) Texaco pumpers, 60 percent were selling premium (super) unleaded gasoline at retail from 3.1 cents to 5 cents a gallon above DTW; Another 25 percent were selling at retail from 5 cents to 8 cents above DTW).

(6) Texaco pumpers were generally of the same quality and size stations which were offered former dealers, under first option Petroleum Marketing Practices Act rights, who operated the old facilities at the same locations; The dealers were economically evicted when Texaco fixed the rent at from $5,000 to $6,000 per month; Based on approximately 50,000 gallons a month sales volumes of the dealers their rent would have been a prohibitive 10 cents a gallon; Based on 100,000 gallons per month volume of sales rent would be 5 cents to 6 cents a gallon; Based on 150,000 per month volume of sales the rent would 3.3 cents to 4 cents a gallon.

(7) That the Texaco imposed 3 percent credit card surcharge is a claimed cost of credit to Texaco for dealer sales using oil company credit cards and is being collected from all dealers; Estimating that 50 percent of Texaco's retail sales are being made on Texaco's credit card at the pumper stations Texaco's cost average approximately 2 cents a gallon; (See Attachment No. 5).

(8) Texaco is paying $7 an hour for 25½ hours a day/7 days a week to former lessee dealers (and others) who now manage gasoline sales at Texaco pumper locations; This monthly cost of $5,350 ($7 x 25.5 x 30 days) if equally charged to each

gallon of gasoline sold equates to 5.3 cents per gallon on 100,000 gallons, 3.5 cents per gallon on 150,000 gallons of monthly sales volumes;

(9) The typical pumper station included in the survey is selling between 100,000 and 150,000 gallons of gasoline each month;

(10) Comparison of the Texaco pumper retail prices with lessee dealer wholesale prices (DTW) evidenced by the enclosed copy of an invoice which represents the uniform price charged by Texaco to Texaco dealers in the Atlanta market reveals that regular leaded gasoline is shown to be 110.25 cents per gallon; regular (lead-free) unleaded is 114.25 cents per gallon; and premium (super) unleaded is shown at 119.25 cents per gallon; Some retail dealers are receiving 4 cents per gallon rebate on each gallon purchased from Texaco after they exceed 50 percent of their previous years purchases for the same month; Those dealers exceeding 100 percent (there are a few) of the same month year ago volumes receive an additional 1½ cents gallon rebate retroactive to the first gallon purchased for that month; Though this rebate is an effective reduction in DTW it is received by only some dealers and even if received barely covers the Texaco imposed 3 percent credit card surcharge Texaco is collecting from its dealers;

Mr. Chairman, it is obvious that Texaco is engaged in anticompetitive marketing practices. While charging their dealers a wholesale price (DTW) which Texaco determines, while fixing a charge for the use of the oil company credit card and while fixing the rent lessee dealers must pay, Texaco is selling at retail the same gasoline in competition with it dealers at retail prices that not only do not cover the DTW price charged dealers, but also do not include the rental value Texaco assigned to the properties (5 cents a gallon), or the 3 percent credit card surcharge (an average of 2 cents a gallon), or the hourly contract rate paid by Texaco to managers of its retail stations (an average of 5.3 cents a gallon).

When considering just the rent (5 cents a gallon), the average cost of the credit card surcharge (2 cents a gallon), and the hourly contract paid managers of the company-operated stations (5.3 cents a gallon), in addition to the dealer tankwagon price, you find that Texaco is using its economic power to lessen and to destory competition from Texaco dealers and from other brands of dealers (see copies of invoices showing DTWs). (See Attachment No. 6, 3 pages).

Example:

[In cents]

	Regular leaded	Regular unleaded	Premium unleaded
Texaco's DTW	110.25	114.25	119.25
Rent	5.00	5.00	5.00
Surcharge	2.00	2.00	2.00
Hourly contract	5.30	5.30	5.30
Texaco's Estimated cost [1]	122.55	126.55	131.55
Texaco's Retail price (average of 20 locations)	109.50	116.10	126.30
Texaco's lowest retail price	106.90	112.70	122.30
Texaco's highest retail price	112.70	119.40	131.00

[1] Not including insurance, utilities and other costs to operate the retail outlets.

To summarize our findings Mr. Chairman, Texaco is destroying competition and small business and will continue to do so unless Congress stops them. The America free enterprise system is not working in the gasoline industry and it cannot work with such anticompetitive marketing practices as is being carried on by these major oil companies.

Texaco is not the only guilty major oil company. Gulf Oil several years ago ran rough-shod over its dealers in the Atlanta market forcing many of them out of business and crippling many others who could not meet the unfair competition created and financed by Gulf Oil. Gulf controls retail prices at a large number of its retail outlets.

Citgo, to my knowledge, has only one dealer left in Greater Atlanta. The rest have fallen to company stores who engaged in similar anticompetitive marketing practices until that competition had been destroyed.

Hess has taken over most of their retail outlets from their lessee dealers.

How had does it have to get before Congress will stop the anticompetitive marketing practices of major oil companies that are eliminating dealers from all but the lowest volume dog-stations the company does not want to operate and cannot close because someone has to provide product to those areas or government will step in to meet the public demand?

Mr. Chairman, as I conclude my statement and prepare to respond to questions, if there are any, I wish to express my sincere hope that you will include the original "Rack Pricing or Wholesale Transfer Price" concept in the 1983 bill to divorce refiners from retailing. I ask you to introduce such a bill early in the 98th Congress. It is necessary to include the rack pricing language to deal with problems equally grave with those created by major oil company direct operated stations by those suppliers who continue to direct retail operate motor fuel service stations.

Again, Mr. Chairman, I thank you personally for your efforts and for your determination to find reasonable solutions to the disastrous and complex problems of our industry. With people like you leading the way I know you will be successful in obtaining passage of legislation that will be fair to all parties concerned and yet correct the anticompetitive conditions which exist in gasoline marketing.

I shall gladly discuss specific points you may wish to question me about regarding my statement and the problems of the industry generally if it is your wish.

Thank you.

OVERVIEW—NO THEORY OR HYPOTHESIS/JUST PLAIN FACTS

SUBJECT: RESEARCH STUDY NO. 026/AMERICAN PETROLEUM INSTITUTE "ECONOMIC THEORY AND EVIDENCE ON CROSS-SUBSIDIZATION OF RETAIL GASOLINE OPERATIONS", APRIL 1982

The author has used a historic principle routinely employed by the 16 integrated petroleum firms. To wit, the principle of distorting, clouding the issue, and creating confusion to redirect attenton away from the real truths.

Never have those who speak for the integrated refiners had any obvious compunction about their evasive methods to avoid directly responding to charges of wrong doing with any evidences that their actions are fair or just, though we must acknowledge API carefully avoids accepting responsibility for the questionable content of this study.

The intelligence of the United States Senators and Congressmen is questioned by the author's technique utilized to confuse the elected officials. Thousands of pages with hundreds of documented evidences have been produced over the past several years particularly which clearly reveals the need for and a demand for corrective legislative action if small business and competition are to survive in the retail marketing of motor fuels, contrary to the discredited DOE study Research Study No. 026 tracks.

Lundberg's letter of July 9, 1982 entitled "How Company-Operated Stations Are Gaining", and the NPN story, page 41, July 1982, entitled "Texaco Quietly Building A Forceful Chain Of High-Volume Super Pumpers" provides current evidence and reveals a continuation of the trend that led the authors of H.R. 1362 and S. 326 to introduce legislation to prohibit the 16 integrated petroleum firms from operating retail outlets.

The cries of foul-play by retail dealers have been supported with factual marketing practice evidences. Research Study No. 026 never once mentioned the specifics of the charges made against the 16 integrated petroleum firms except by use of terminology which the author carefully explains away. Terminology, possible misapplied terminology, has been argued—not the gut issue of unfair marketing practices that are destroying dealers and competition.

THE REAL STATEMENT OF ISSUE

Pushing aside the fancy terminology for a look at the specific issues is a more direct approach to consider the merit of the charges made against the 16 integrated firms that justifies prohibiting them for operating company stores in competition with their lessee and open dealers.

The American free enterprise system cannot function in retail gasoline marketing if integrated petroleum firms are allowed to continue: (1) To sell gasoline at retail at retail prices that are inadequate to cover the whole sale price they charge retail dealers, a rental that is consistent with the rental charged retail (lessee) dealers for comparable company owned or controlled property, and the actual cost of operating the retail facility; (2) To deny their lessee and open dealers the clear-cut option to purchase a competitive product (open supply rights) whenever the integrated refiner (or his jobber) will not meet the price offering of the competitor with a reasonable competitive price as a condition to remain an exclusive branded dealer; and (3) to allow the integrated firms to knowingly sell gasoline to a jobber at jobber prices when such gasoline is in fact being purchased for resale at retail in company stores operated by the jobbers.

It is not a question of terminology that is before the United States Congress. Whether you call the above practices downstream subsidization from crude oil profits or predatory practices with or without intent or by any other name, the fact is that small business cannot compete under such circumstances. If they cannot compete they cannot survive at a reasonable income. If thousands and thousands more of small businesses are run out of gasoline marketing, there is a lessening of competition in the marketplace. Competition is being destroyed.

According to current information, refiners now sell more than 25 percent of all branded motor fuels sold to the ultimate consumer through their company stores. The share of branded motor fuels sold to ultimate consumers by jobbers through their compoany operate stores is at least equal to or greater than the share of the market of the 16 integrated refiners. The combined sales by the 16 integrated petroleum firms and their jobbers and the trend to greater growth leaves no doubt that such marketing practices are critical to the point of destroying lessee dealers and open dealers.

The bottom line issue is that consumers of motor fuels will benefit more with the masses of small businesses selling motor fuels than with a few integrated refiners manipulating the market place and taking all the profits out of the local communities of this nation.

Competition and small business must remain in gasoline (retail) marketing to give motorists the lowest price and the highest value for their motor fuel dollars.

Prepared by: Jack W. Houston, Chairman, Government Affairs Committee. Jack W. Houston is the Executive Director of The Georgia Association of Petroleum Retailers.

[illegible] NOT DESTROY—THIS IS YOUR ORIGINAL INVOICE - 1

LOADING ORDER — TRUCK BILL OF LADING AND MANIFEST — INVOICE

Attachment No. 5
(Ref. Pages 8 & 9)

TEXACO
PETROLEUM PRODU

THANK YOU FOR BUYING TEXACO

FROM
SHIP TO

CHARGE TO

[illegible] ENTERPRISES INC
[illegible]
[illegible] AVENUE
[illegible] 2030[illegible]

PLEASE ADDRESS REMITTANCE AND CORRESPONDENCE TO
TEXACO Inc.
P. O. BOX [illegible]
ATLANTA, GA
[illegible]

PLEASE IDENTIFY REMITTANCE BY INVC DATE AND NUMBER AS SHOWN ABO

DEL GRID NO	CARR OR DEL UNIT	LICENSE NO	TIME OF LOADIN
	[illegible] 4		

SPECIAL TRUCK MARKINGS LABELS OR PLACARDS OFFERED/APPLIED AS REQUIRED BY DEPARTMENT OF TRANSPORTATION

CHECK THIS COLUMN IF NO LABEL REQ ON HAZARDOUS MATERIAL

CODE	NO PKGS	PKG KIND	TEMP	GROSS QUANTITY	ADJ QTY	NET QUANTITY	TAXES FEDERAL STATE	PRICE EXCL TAX	AMOUNT
				1999			.04 .075	1.1925	[illegible]
				[illegible]			.04 .075	1.1925	[illegible]
				2993			.04 .075	1.1425	4,4[illegible]
				6162			-.04		[illegible]
							[illegible] TOTAL		[illegible]

L 5 7
31-30 14 7
65-55 34 60

[illegible] IS CERTIFIED AS FOLLOWS
[illegible] GAS 97.0 UNLEADED REGULAR GAS

APPLICABLE MTR FUEL TAXES NOT BILLED SEPARATELY ARE INCLUDED IN THE PRICE SHOWN

TAX ASSUMED BY PURCHASER ☐ SELLER ☐ LIC NO

INSERT FOLLOWING WHEN REQUIRED BY FEDERAL OR STATE LAWS OR REGULATIONS

I.C. PERMIT	STATE PERMIT OR LICENSE	VEHICLE LICENSE NO	STATE MTR FUEL TAX REGS

This is to certify that the above-named materials are properly classified described packaged marked and labelled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation

Shipper's imprint in lieu of stamp not a part of Bill of Lading approved by the Interstate Commerce Commission

Seller represents that in the production and manufacture of the goods and/or services covered by this invoice it has fully complied with all the provisions of THE LABOR STANDARDS ACT OF 1938 as amended

PRODUCT - LINE			
GRAVITY			
10% AT F			
50% AT F			
90% AT F			
END POINT AT F			
IRP			
COLOR			
KEROSENE OR BURNING OIL FLASH F TAG CLOSED CUP			

RECEIVED PAYMENT INV TOTAL $ 9774.27
OTHER 6537.69
CHECK 3236.58
CASH

TEXACO Inc.
BY Lyon
Earl M. Smit
PURCHASER G. D. Wood Jr.

DATE

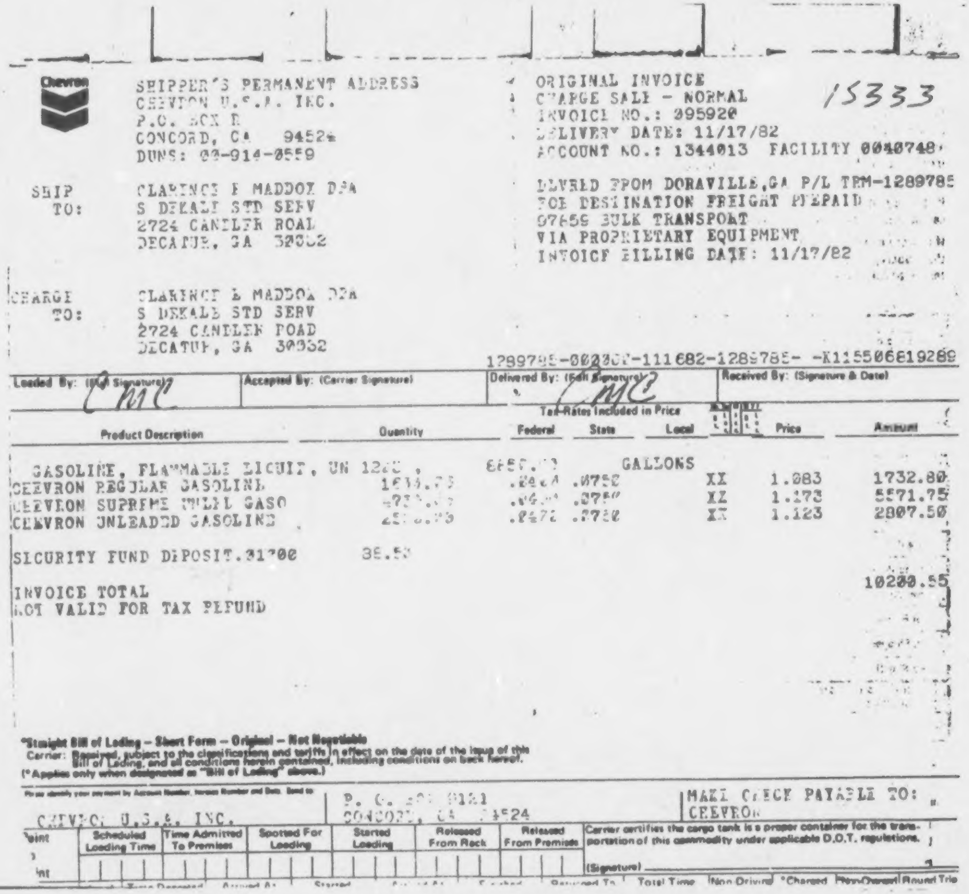
DATE
Lyon

SHIPPER

TRUCK NO
BL NO

If this shipment moves in other than Shipper's vehicle it shall be governed by (a) the contract between shipper and carrier if carrier is a contract carrier or (b) the terms of the applicable uniform bill of lading form prescribed in the current National Motor Freight Classification if carrier is a common carrier provided that if this is intrastate shipment by common carrier in a state where bills of lading have been legally prescribed this shipment shall be governed by the terms of applicable bills of lading

Attachment No. 6
(1 of 3 pages)
(Ref. page 10)



Chevron

SHIPPER'S PERMANENT ADDRESS
CHEVRON U.S.A. INC.
P.O. BOX E
CONCORD, CA 94524
DUNS: 00-914-0559

ORIGINAL INVOICE
CHARGE SALE - NORMAL
INVOICE NO.: 395920
DELIVERY DATE: 11/17/82
ACCOUNT NO.: 1344013 FACILITY 0040748

15333

SHIP TO:
CLARENCE E MADDOX DBA
S DEKALB STD SERV
2724 CANDLER ROAD
DECATUR, GA 30032

DLVRED FROM DORAVILLE,GA P/L TRM-1289785
FOB DESTINATION FREIGHT PREPAID
97659 BULK TRANSPORT
VIA PROPRIETARY EQUIPMENT
INVOICE BILLING DATE: 11/17/82

CHARGE TO:
CLARENCE E MADDOX DBA
S DEKALB STD SERV
2724 CANDLER ROAD
DECATUR, GA 30032

1289785-00[illegible]-111682-1289785- -K115506619289

Loaded By: (Full Signature)	Accepted By: (Carrier Signature)	Delivered By: (Full Signature)	Received By: (Signature & Date)
CMC		CMC	

Product Description	Quantity	Tax Rates Included in Price Federal	State	Local		Price	Amount
GASOLINE, FLAMMABLE LIQUID, UN 1203,	[illegible]	GALLONS					
CHEVRON REGULAR GASOLINE	16[illegible]	[illegible]	.0750		XX	1.083	1732.80
CHEVRON SUPREME UNLEADED GASO	[illegible]	[illegible]	.0750		XX	1.173	5571.75
CHEVRON UNLEADED GASOLINE	25[illegible]	.0472	.0730		XX	1.123	2807.50
SECURITY FUND DEPOSIT.01700	35.5[illegible]						
INVOICE TOTAL							10200.55
NOT VALID FOR TAX REFUND							

*Straight Bill of Lading – Short Form – Original – Not Negotiable
Carrier: Received, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading, and all conditions herein contained, including conditions on back hereof.
(*Applies only when designated as "Bill of Lading" above.)

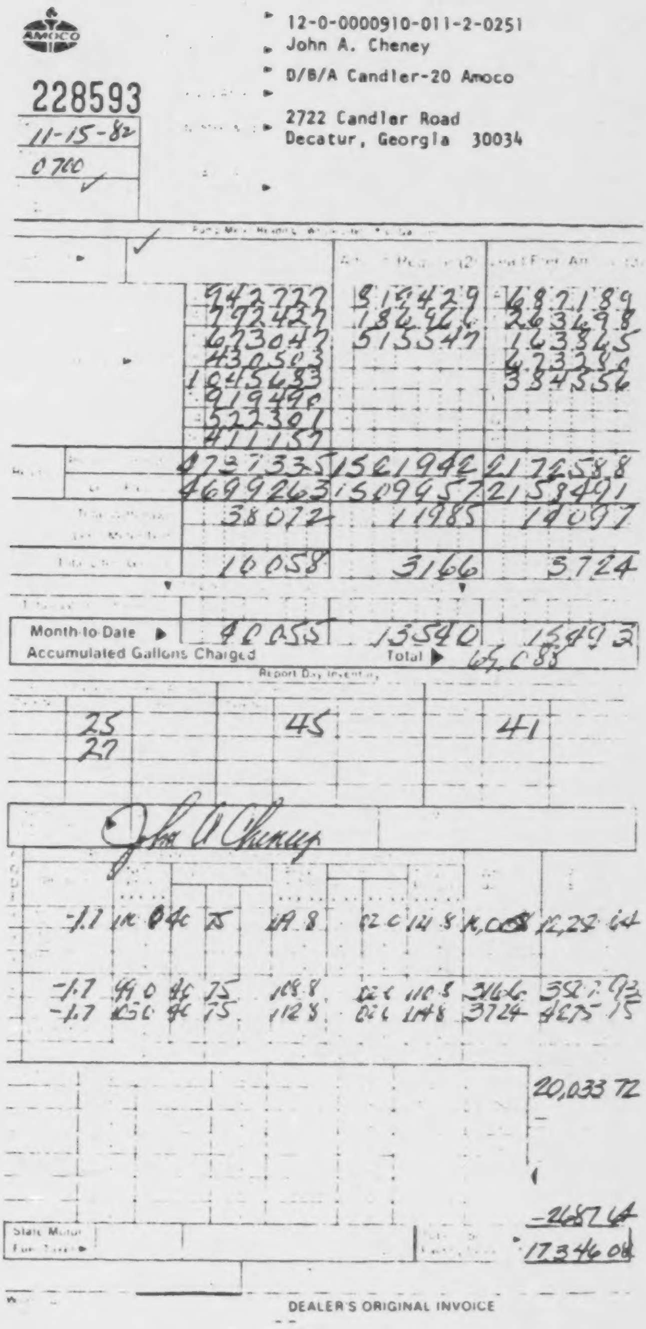
Please identify your payment by Account Number, Invoice Number and Date. Send to:
CHEVRON U.S.A. INC.
P. O. BOX [illegible]
CONCORD, CA 94524

MAKE CHECK PAYABLE TO:
CHEVRON

Point	Scheduled Loading Time	Time Admitted To Premises	Spotted For Loading	Started Loading	Released From Rack	Released From Premises	Carrier certifies the cargo tank is a proper container for the transportation of this commodity under applicable D.O.T. regulations.
Point							(Signature)

52

Attachment No. 6
(2 of 3 pages)
Ref. page 10



AMOCO

12-0-0000910-011-2-0251
John A. Cheney
D/B/A Candler-20 Amoco

2722 Candler Road
Decatur, Georgia 30034

228593
11-15-82
0700 ✓

942727	819429	687189
792427	186926	263498
673047	515547	163345
430503		673386
1045633		334556
919496		
522301		
411157		
4737335	1521942	2172588
4699263	1509957	2158491
38072	11985	14097
10058	3166	3724

Month-to-Date ▶ 40055 13540 15493
Accumulated Gallons Charged Total ▶ 69,088

Report Day Inventory

25 27	45	41

John A Cheney

-1.7	[illegible]	[illegible]	75	119.8	02.0	121.8	10,058	12,250 64
-1.7	99.0	9c	75	108.8	02.0	110.8	3166	3507 93
-1.7	105.0	9c	75	112.8	02.0	114.8	3724	4275 15

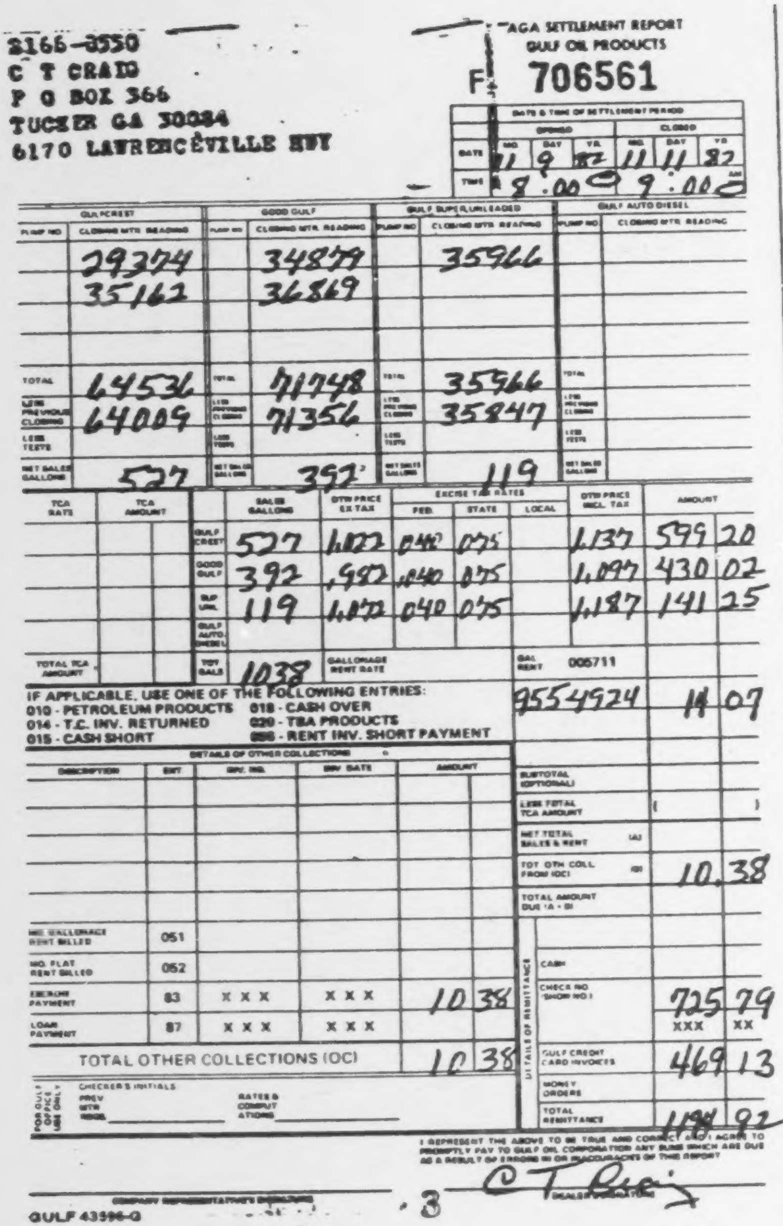
20,033 72

-2687 64

State Motor Fuel Taxes ▶

17346 08

DEALER'S ORIGINAL INVOICE



8166-3550
C T CRAIG
P O BOX 366
TUCKER GA 30084
6170 LAWRENCEVILLE HWY

AGA SETTLEMENT REPORT
GULF OIL PRODUCTS

F 706561

	DATE & TIME OF SETTLEMENT PERIOD					
	OPENED			CLOSED		
	MO.	DAY	YR.	MO.	DAY	YR.
DATE	11	9	82	11	11	82
TIME	8:00			9:00		

GULFCREST		GOOD GULF		GULF SUPER UNLEADED		GULF AUTO DIESEL	
PUMP NO.	CLOSING MTR. READING	PUMP NO.	CLOSING MTR. READING	PUMP NO.	CLOSING MTR. READING	PUMP NO.	CLOSING MTR. READING
	29374		34879		35966		
	35162		36869				
TOTAL	64536	TOTAL	71748	TOTAL	35966	TOTAL	
LESS PREVIOUS CLOSING	64009	LESS PREVIOUS CLOSING	71356	LESS PREVIOUS CLOSING	35847	LESS PREVIOUS CLOSING	
LESS TESTS		LESS TESTS		LESS TESTS		LESS TESTS	
NET SALES GALLONS	527	NET SALES GALLONS	392	NET SALES GALLONS	119	NET SALES GALLONS	

TCA RATE	TCA AMOUNT			SALES GALLONS	DTW PRICE EX TAX	EXCISE TAX RATES			DTW PRICE INCL. TAX	AMOUNT	
						FED.	STATE	LOCAL			
			GULF CREST	527	1.022	040	075		1.137	599	20
			GOOD GULF	392	.982	.040	075		1.097	430	02
			SUP UNL.	119	1.072	040	075		1.187	141	25
			GULF AUTO DIESEL								
TOTAL TCA AMOUNT			TOT GALS	1038	GALLONAGE RENT RATE				GAL RENT 006711		
									9554924	14	07

IF APPLICABLE, USE ONE OF THE FOLLOWING ENTRIES:
010 - PETROLEUM PRODUCTS
014 - T.C. INV. RETURNED
015 - CASH SHORT
018 - CASH OVER
020 - TBA PRODUCTS
056 - RENT INV. SHORT PAYMENT

DETAILS OF OTHER COLLECTIONS

DESCRIPTION	ENT	INV. NO.	INV DATE	AMOUNT	
NO. GALLONAGE RENT BILLED	051				
NO. FLAT RENT BILLED	052				
ESCROW PAYMENT	83	X X X	X X X	10	38
LOAN PAYMENT	87	X X X	X X X		
TOTAL OTHER COLLECTIONS (OC)				10	38

SUBTOTAL (OPTIONAL)			
LESS TOTAL TCA AMOUNT		(	)
NET TOTAL SALES & RENT	(A)		
TOT OTH COLL FROM (OC)	(B)	10	38
TOTAL AMOUNT DUE (A + B)			
DETAILS OF REMITTANCE			
	CASH		
	CHECK NO (SHOW NO.)	725 XXX	79 XX
	GULF CREDIT CARD INVOICES	469	13
	MONEY ORDERS		
	TOTAL REMITTANCE	1194	92

FOR GULF OFFICE USE ONLY
CHECKER'S INITIALS
PREV MTR READ. ____________
RATES & COMPUTATIONS ____________

I REPRESENT THE ABOVE TO BE TRUE AND CORRECT AND I AGREE TO PROMPTLY PAY TO GULF OIL CORPORATION ANY SUMS WHICH ARE DUE AS A RESULT OF ERRORS IN OR INACCURACIES OF THIS REPORT

____
COMPANY REPRESENTATIVE'S SIGNATURE

3

C T Craig
DEALER'S SIGNATURE

GULF 43596-G

Attachment No. 6
(3 of 3 pages)
Ref. page 10

Attachment No. 1
(Ref. Page 1)

THE CASE FOR LEGISLATIVE RELIEF FROM THE IMPENDING DESTRUCTION OF SMALL BUSINESS AND COMPETITION IN THE GASOLINE INDUSTRY

JANUARY 22, 1980
(Revised February 1980)

FRED C. ALLVINE
JACK W. HOUSTON
OTIS D. PHILLIPS

The materials presented in this Report represent only the personal views of the author. Brief vitas at end of the Report.

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Otis D. Phillips

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INTRODUCTION

There are several reasons why the authors undertook this report. Congress has been very busy dealing with larger energy problems, while the problems of small business in the gasoline industry have grown worse. The takeover of marketing is in an advancing stage and unless stopped now, the result will be irreparable damage to the structure of competition in the gasoline industry. Additionally, the writers of this report felt that individuals representing different backgrounds could come together in good faith and explain the problems that are eroding competition provided by branded marketers, private brand marketers and which are contrary to the public interest. The writers of the report felt that there was a definite need to view problems confronting small business in this industry in a broad sense so as to fully understand what was happening and what was in store for competition.

To carry out the goal of fully understanding the problems that were injuring and destroying competition in small business it was necessary to consider a large volume of information about this complex industry. This broad base understanding is clearly needed if an effective response is to be developed to the problems undermining the structure of competition in the gasoline industry. Thus, Chapter I of the Report presents gasoline marketing as the last stage in a highly integrated petroleum industry. Next, several of the long standing problems which have restricted the normal workings of competition are developed in Chapter II. This chapter also explains that Congress has passed important legislation to preserve competition in this industry, but that this action solved only one set of problems and has not stopped the continuing destruction of competition. Information is presented in Chapter III which shows that several large petroleum companies deliberately set out on a course of action to destroy branded and private brand marketers and that they have succeeded. The unfair and anticompetitive practices employed by these petroleum companies to destroy competition and to integrate forward into direct marketing are developed in Chapter IV. The material presented in Chapter V explains how the actions of the Department of Energy have aided and abetted the destruction of small business and are contributing to the takeover of marketing by the large refiners. A summary of the major factors contributing to the destruction of competition in the gasoline industry is presented in Chapter VII.

Clearly the gasoline industry is at a turning point. The petroleum products shortages and regulatory decisions have established an environment in which the large refiners can use the power developed from the earlier stages of the industry to eliminate the strenuous competition provided by small business. Given a chance to fairly compete and not to be obstructed by the powers of the integrated firms derived by their non-marketing activities, the gasoline industry can remain highly competitive. On the other hand, if action is not taken to permanently stop the integrated firms from unfairly becoming involved in marketing, then these large firms will completely dominate the industry by integrating forward from crude oil production to the final sales of gasoline in the marketplace. The need for legislative relief to prevent the giant integrated firms from unfairly and illegally destroying competition and hurting the public welfare is argued in Chapter VIII.

The fate of competition in the gasoline industry and its flexibility in meeting the various needs of motorists is now in the hands of Congress. We believe that speedy action is needed by Congress to insure fair and equitable competition in the gasoline industry and that the public interest will be protected. This time structural change must be made rather than another attempt to remedy through regulations. General recommendations on how Congress can regulate permanent relief from those who wish to monopolize the gasoline industry are presented in Chapter VIII.

CHAPTER I.
GASOLINE MARKETING IN CONTEXT OF THE PETROLEUM INDUSTRY

The 1970s have been a period of rapid change in the gasoline industry with more than 100,000 branded dealers going out of business from an estimated universe of approximately 300,000 total gasoline outlets. In this past year alone an estimated 17,000 stations have gone out of business (see Figure I). The attrition in number of stations is expected to continue for some time, with possibly another 50,000 units being closed. As this significant restructuring of gasoline marketing has been occurring, there has been a major decline in the share of gasoline sold by independent marketers and a sharp increase in gasoline sold by refiners and resellers direct outlets.

The declining role of independent gasoline marketers has been brought about by a number of unfair and anticompetitive practices of the large integrated petroleum companies and their jobbers. Small business is on the precipice and can be virtually destroyed unless the refiners and their resellers are stopped from seizure of the gasoline industry.

The large refiners and their distributors supply around 85 percent of the gasoline marketed at retail. From May 1972 to May 1979 the number of refiner supplied leasee dealers decreased from 111,534 to 54,526 or by 51.1 percent and the number of "open to buy" branded dealers similarly decreased from 93,268 to 52,395 or by 43.8 percent (see Table I). While more than 100,000 dealers were being eliminated, the number of refiner direct outlets increased from 11,125 to 13,927, an increase of 25.2 percent. Furthermore, there is reason to believe that the growth in direct marketing outlets is considerably understated. Over the last few years companies such as Gulf have eliminated large numbers of their dealers and have contracted with convenience store chains to "man" the units. Technically, Gulf may not "operate" the stations but they control the price of gasoline and derive all the revenues from the sale of gasoline.

The share of gasoline marketed through refiner direct "operated" units has increased even more dramatically than the number of units themselves. The percent of gasoline sold through refiner direct "operated" units has grown from 12.67 percent in January 1972 to 25.78 percent by April 1979 (see Table 2). Furthermore, as noted in the previous paragraph, if all "controlled" and not just direct "operated" stations are included, the growth in refiner-marketer share could be even more dramatic.

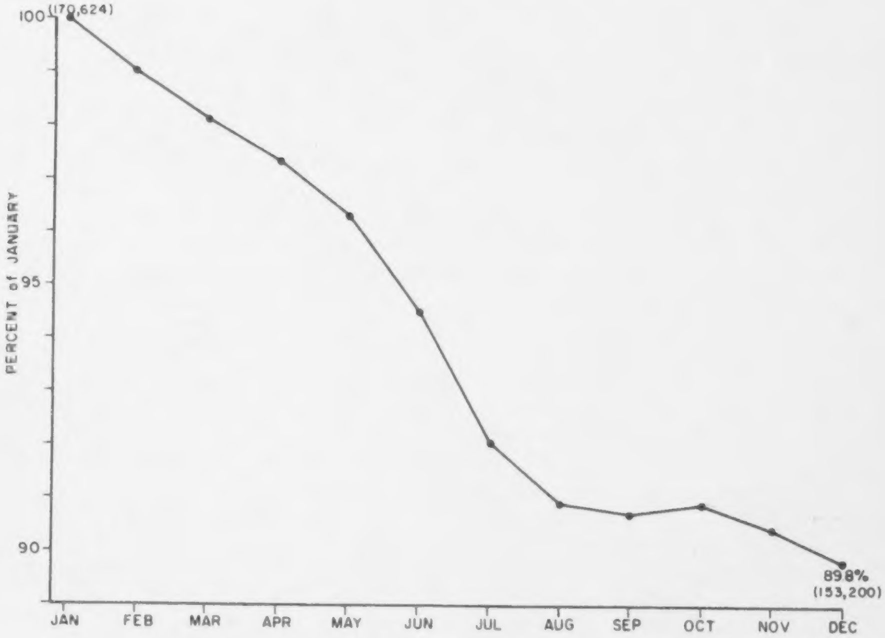
While this report concentrates on developments in the gasoline industry, it is necessary to consider gasoline marketing as the final link in the vertically integrated petroleum industry. It will be shown that marketing is the fourth and final level in the petroleum industry and is the only level not to be dominated by a relatively few giant integrated companies. Up until the petroleum products shortages of 1973 the gasoline industry was highly competitive with hundreds of thousands of independent marketing agents offering different levels of services and prices designed to meet the needs of the driving public. It is largely since the shortages that several of the major petroleum companies have instituted plans to integrate forward and take over the gasoline industry. During more competitive times prior to the shortages

FIGURE I

Station Population Falls in 1979

Despite the gasoline shortage, average station gallonage increases.

HOW THE U.S. SERVICE-STATION POPULATION
HAS DECLINED BY MONTH, 1979



THE NUMBER OF U.S. service stations is estimated to have declined from 170,624 in January to 153,200 in December, 1979. Each point in the graph shows the percentages of stations compared with January. The percentage of stations open for business in December was 89.8% of what it was in January.

Source: LUNDBERG LETTER, January 11, 1980 (reprinted with permission)

TABLE I

CHANGE IN NUMBER OF STATIONS OPERATED BY DEALERS AND REFINERS

	REFINER* OPERATED	OPEN DEALERS SUPPLIED DIRECTLY	LEASEE DEALERS SUPPLIED DIRECTLY	TOTAL REFINER SUPPLIED STATIONS
May 1972	11,125	93,268	111,534	215.927
May 1973	11,583	88.447	105,806	205,836
May 1974	11,638	82,153	93,403	187,194
May 1975	13,812	78,638	85,841	178,291
May 1976	15,312	72,456	79,238	167,051
May 1977	15,800	64,382	67,171	147,353
May 1978	15,100	59,283	59,675	134,058
May 1979	13,927	52,395	54,526	120,848
Change from				
May 1972 to May 1979				
	2,802	(40,873)	(57,008)	(95,079)
Percentage Change	25.2%	(43.8%)	(51.1%)	(44.0%)

*The growing number of refiner operated stations is very likely to be understated since companies such as Gulf have eliminated many dealers and have contracted with convenience store chains to "man" the units, Gulf sets the price. These should be counted as company direct marketing outlets; but technically the refiners may be getting around from labeling them what they truly are.

SOURCE: D.O.E. — UNIVERSE ESTIMATES OF BRANDED MOTOR GASOLINE SALES, REPORT 5.

TABLE 2

GROWTH IN MARKET SHARE BY REFINER DIRECT MARKET OUTLETS

		VOLUME (thousands)	% OF MARKET
1972	January	536,445	12.67
	April	561,033	12.67
	July	637,911	12.93
	October	609,904	13.02
1973	January	615,855	13.52
	April	626,546	12.99
	July	735,674	13.50
	October	761,690	14.64
1974	January	708,857	15.93
	April	669,721	14.62
	July	753,367	14.56
	October	769,952	16.12
1975	January	784,964	18.32
	April	842,935	19.06
	July	918.254	18.60
	October	968,604	21.05
1976	January	987,438	22.79
	April	1,029,634	22.33
	July	1,111,210	22.09
	October	1,122,241	24.27
1977	January	1,061,104	24.39
	April	1,139,348	24.62
	July	1,214,872	24.52
	October	1,222,070	25.94
1978	January	1,089,454	25.59
	April	1,189,232	26.22
	July	1,276,606	25.64
	October	1,236,074	25.55
1979	January	1,164,037	25.39
	April	1,144,333	25.78

Source: DOE — Report 5, Universe Estimates of Branded Motor Gasoline Sales.

The growing number of refiner operated stations is very likely to be understated since companies such as Gulf have eliminated their dealers and have contracted with convenience store chains to "man" the units; Gulf sets the price. These should be counted as company direct marketing outlets, but technically the refiners may be getting around from labeling them what they truly are.

the petroleum companies were largely unsuccessful in competing at the marketing level. However, as will be shown, these large companies have taken advantage of regulations and dealers have not been protected as required by the Emergency Petroleum Allocation Act from entirely unfair and predatory acts of their suppliers. Several of the large refiners are set on a course to eliminate independent gasoline marketers and to integrate forward into marketing until they control this activity in the same manner they dominate refining and other levels of the petroleum industry.

Competition has been severely damaged in recent years and the gasoline industry is at a turning point. Congress must take stock of what is occurring, why it is happening and whether they approve of the major integrated petroleum companies using their financial and monopoly supply position to divert an ever increasing share of gasoline through company direct operations. More specifically this report charges that the large integrated petroleum companies have (1) subsidized their marketing operations from profits gained at other levels of the petroleum industry such as crude oil and refining; (2) have at times favored their direct company operations by transferring or selling to them at the lower rack price or some other arbitrary lower price while selling to dealers at the higher dealer tankwagon price, (3) have refused to sell unbranded gasoline on a contract basis to private brand marketers, (4) have favored during the shortage period their company operated units with high volume allocations; and (5) the Department of Energy has failed to carry out its mandate to preserve the structure of competition in the marketing of gasoline and particularly to protect the branded and nonbranded marketer as well as independent refiner from being destroyed by the actions of the large integrated petroleum companies.

Unless the large integrated petroleum companies are stopped from using their power to integrate forward into marketing, we will be looking backwards 10 or 15 years from now at a totally integrated petroleum industry dominated at all levels by a few large petroleum companies. Congress has the authority if it deemed appropriate to halt the large petroleum companies from destroying small business and dominating the gasoline industry. This industry can be highly competitive and meet the needs of the driving public if the integrated petroleum companies are stopped forever from unfairly interfering in the marketing of gasoline. The problems of gasoline marketing have absorbed more time of the Congress than any other single industry. Congress has been terribly patient with the integrated refiners in hopes that these companies would not abuse the power which they possess, but they persist in doing so.

STRUCTURE OF PETROLEUM INDUSTRY

To aid in understanding the problems existing in gasoline marketing it is necessary to briefly review the structure of competition in the petroleum industry. This industry is divided into four segments including (1) production, (2) transportation, (3) refining, and (4) marketing. It is necessary to consider these four levels since most of the large integrated firms operate at all levels and dominate all but the final level of marketing. To understand the formation of this vertical structure it is necessary to go back to the breakup of the Standard Oil Trust in 1911. The Government found that the Standard Oil

Trust had monopolized the refinery industry and also had a dominant position in pipelines. As a consequence the government required that the Trust be dissolved and created 34 companies to compete in the petroleum industry. Over the years these companies have integrated backward into crude oil and pipeline and are now rapidly integrating forward into marketing and are now in a position of dominating the industry from the wellhead to the drivers' tank.

The beginning of the petroleum industry involves the production of crude oil. In the early 1940's the House Select Committee on Small Business estimated that there were 20,000 independent producers of gasoline in the United States which accounted for 50 percent of all oil production. Thirty years later the number of independent producers had diminished to 8,000 and their share of total production had declined to one-fourth of the total. The declining share of production by independent producers was largely off-set by the 20 largest integrated petroleum company activities. Their share of production rose from around one-half of the total in the early 1940s to three-fourth of the total as of 1975. Furthermore, the trend of increasing concentration of production by the 20 largest companies is expected to continue unabated. The 1974 Preliminary Staff Report on The Petroleum Industry by the Federal Trade Commission indicated that the largest producers controlled 93 percent of the nation's proven domestic reserves of crude oil and the eight largest alone controlled 64 percent of the total reserves. Since the reserves of the refiners exceed the production, the large companies production of oil is expected to increase as a percentage of the total over time.

Another factor contributing to the increasing dominance of large companies in the production of oil is the enormous cost of discovering oil in the present day environment. Most of the unexplored areas of the country are controlled by the Federal Government and they are being auctioned off in large blocks for prices often running to hundreds of millions of dollars. Most of these unexplored areas are in hostile environments such as in Alaska or in deep offshore waters where the cost of exploring for and producing oil exceeds the financial means of practically all independent producers.

Finally, our oil needs in the future are going to be increasingly met by synthetic methods of producing oil from tar sands, shale and coal. These projects all require massive capital invesments which are beyond the financial means of small business. When all factors are considered the trends towards increasing concentration of crude oil production by the large integrated petroleum companies is expected to continue unabated.

The value of crude oil comes from refining it into commercially useful products including gasoline, jet fuel, diesel fuel, home heating oil, asphalt, lubricants, etc. Presently, there are around one hundred thirty refining companies in the United States, but a small number of these own the vast majority of the industry's refining capacity. For example, the 1973 FTC Staff Study found that in 1970 the 20 largest integrated oil companies controlled 80 percent of our refining capacity, the eight largest controlled 58 percent and the four largest 34 percent. This dominance of the refining sector is likely to continue since demand for petroleum products has peaked and may actually be decreasing. Even if there were need for more capacity it is doubtful whether this would be provided by independent refiners since they face major difficulty in obtaining crude oil and the price of that crude oil has not been competitive in recent years. Additionally, the entry of new independents into the refining industry is highly unlikely since a largescale plant would have to be developed to be competitive and this would run into the hundreds of millions of dollars.

Most of the crude oil produced in this country is transported by pipelines to refineries. Over 90 percent of the crude oil pipelines are either individually owned or joint ventures of the major integrated petroleum companies. The majors also control most of the intra-state trunk lines from which they gather the oil into their major inter-state pipeline systems. Independent producers in fields where the majors have large positions frequently find that they must sell their oil at the wellhead to the major owned trunk lines if they want to market their crude oil. Thus, the integrated companies have been able to deny the large independent traders access to the trunk lines where they could buy products from the independent producers. The majors are able to post the field price they will pay for oil and if the producers don't accept it then their oil is not purchased. Also, the trunk line permits the integrated petroleum companies to actually control the marketing of the crude oil produced by independent producers which makes their dominance over crude oil greater than their own production. As the pipelines move the crude oil to refineries, pipelines are also the primary way of transporting gasoline, heating oil and other finished products away from refineries to the markets scattered across the country where the demand exists. More than three-fourths of the finished product pipeline capacity is owned and controlled by the larger petroleum companies.

What has been described so far is the dominance of the major refiners (1.) in the production of crude oil, (2.) its collection and transportation through pipelines, and (3.) the processing of oil by refineries and (4.) the transportation of finished product by pipeline to the markets scattered throughout the country where it is demanded. Standing in stark contrast to the large refiners dominance over all the earlier stages of the petroleum industry is their more limited role in the marketing of gasoline to the driving public. Marketing of gasoline and other petroleum products has long been the stronghold of the independent marketers. While the majors have attempted to indirectly control this process through branding and ownership of retail locations, the actual marketing has been done by hundreds of thousands of independent marketing operations. It is the marketing end of the business which is now seriously threatened by the plans and actions of the large refiners to eliminate branded and private brand marketers and to integrate forward into direct marketing. It should be clear from the discussion so far that these large integrated companies have many profit centers and huge investments in earlier levels of the industry that can be used to unfairly finance their vertical integration into marketing and to complete their takeover of the entire petroleum industry.

THE MARKETING SECTOR

The marketing sector of the petroleum industry in contrast to the earlier levels is characterized by strenuous competition between hundreds of thousands of independent marketers. Each of these marketers provide a level of services and price as they strive to attract a segment of the market to purchase gasoline and related products from their individual outlets. It is this last link in the petroleum industry that is now threatened by the programs and plans of refiners to integrate forward into direct marketing.

It is our contention that the public interest would not be preserved by permitting this to happen. Once the conversion to major dominated marketing is completed the petroleum companies could then dictate the level of price and service at which they would sell their gasoline to the motoring public. The major petroleum companies are not more efficient in terms of providing services than the independent marketers who sell their products. The gains of the large refiners at the marketing level are to a large extent the result of the shortage condition and the monopoly like position created for the refiner. They are able to take advantage of the power they have to unfairly compete at the marketing level of the industry. It is our firm belief that there is no evidence showing that the public will be provided better service and lower prices as a consequence of permitting the large refiners to extend their dominance over the marketing sector of the petroleum industry. We believe, furthermore, that if Congress and the public understand that independent competition in the marketing of gasoline faces the real prospect of being destroyed by the large suppliers that this takeover of marketing will not be permitted to happen.

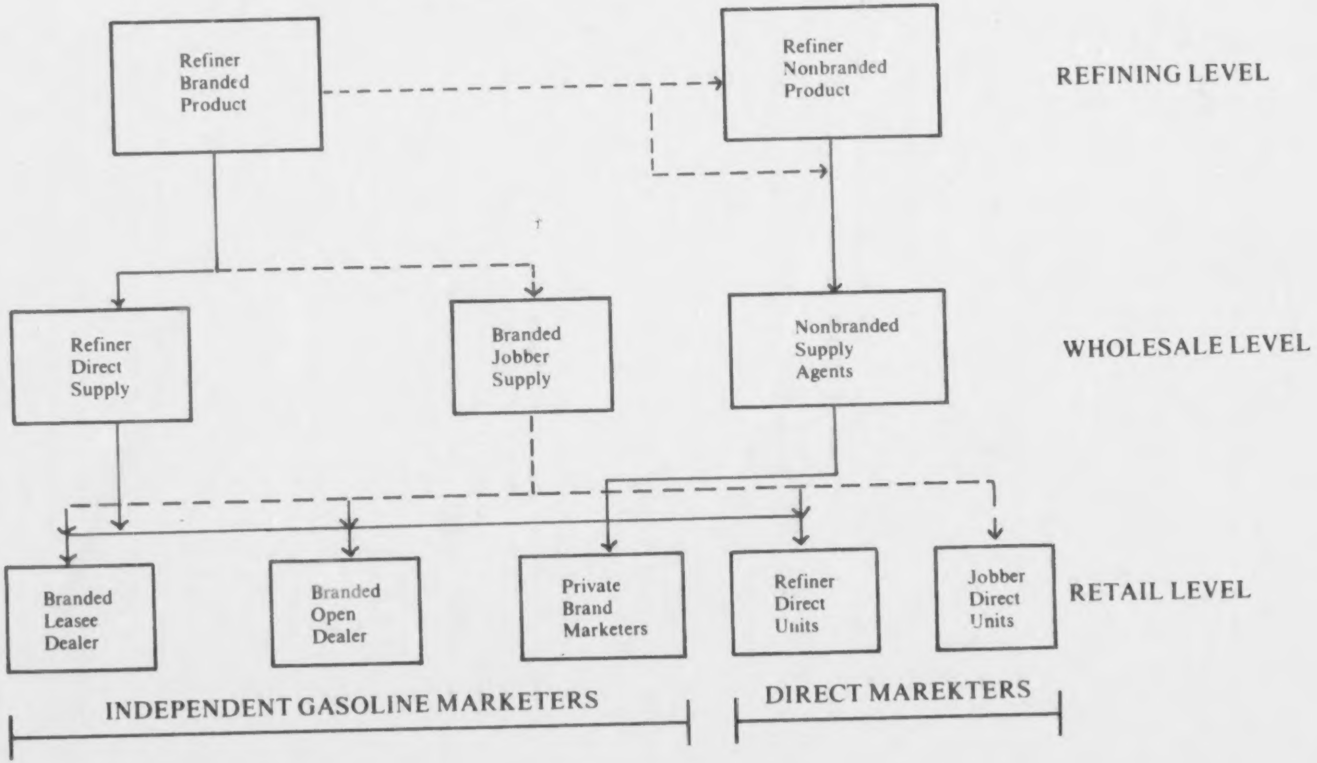
It is estimated that approximately 85 percent of all gasoline marketed in this country displays a brand name of the supplying refiner. Brand names of refiners have been developed through extensive advertising campaigns and prominent signing at retail outlets. The purpose of branding is to provide customers with assurances that standards of product quality will be maintained and be available at stations displaying a given brand name. Refiners also hope to develop steady customers that are loyal to a particular brand regardless of the station from which it is purchased. The remaining 15 percent of the gasoline sold at retail are private brands that are owned by the retailer and not by the supplying refiner.

It is estimated that in the early 1970s there were approximately 200,000 retail outlets selling gasoline that derived more than half of their sales from petroleum products. In addition, there may have been up to another 100,000 retail outlets that sold gasoline, but that did not derive a majority of their sales from petroleum products. These 300,000 stations were operated by five categories of marketers: branded leasee dealers, branded open dealers, private brand marketers, refiner direct units, and jobber direct units. The five categories of gasoline marketers are shown at the lower level in Figure 2. The largest category of gasoline marketers is *branded leasee dealers* who rent their stations from refiners and resellers who are also their suppliers of gasoline. It is estimated that in 1972 leasee dealers sold 55 percent of the gasoline at retail.

The second largest category of gasoline marketers are *open to buy branded dealers.* While these dealers sell gasoline under their supplier's brand, they own their own station properties rather than renting them from their

FIGURE II

MOTOR GASOLINE DISTRIBUTION SYSTEM


Refiner Branded Product
Refiner Nonbranded Product
REFINING LEVEL
Refiner Direct Supply
Branded Jobber Supply
Nonbranded Supply Agents
WHOLESALE LEVEL
Branded Leasee Dealer
Branded Open Dealer
Private Brand Marketers
Refiner Direct Units
Jobber Direct Units
RETAIL LEVEL
INDEPENDENT GASOLINE MARKETERS
DIRECT MAREKTERS

suppliers. These independent gasoline marketers are referred to as open to buy branded dealers since they do have some discretion, during normal supply period, to change from one brand of gasoline to another. In 1972 it is estimated that open to purchase dealers sold 16 percent of the gasoline at retail.

The third category of independent marketer is the private brander. The private brander purchases unbranded gasoline from refiners and sells the gasoline under the marketer's own brand. In most instances these are lesser known brands such as Hudson, Martin, Star, Hood and a variety of other names chosen by the private brand marketer. It is estimated that there were around 10,000 private brand marketing outlets in 1972 marketing 15 percent of the gasoline at retail. Private branders have historically sold the gasoline on a high volume, limited service, low price basis. Typically they have sold gasoline for 2 to 5 cents per gallon below the prevailing price of the branded retail outlets. The somewhat higher prices at the branded outlets resulted from the supplier's cost of branding and brand development, more extensive car service, and large numbers of conveniently located outlets. However, while generally major brand gasoline has sold for a few cents more than private branders' gasoline, there are many instances where branded dealers who own their own outlets compete on a high volume, low price, basis with the private brand marketers.

There have been two principal ways of supplying gasoline to the branded dealers as noted in Figure 2. In the major metropolitan markets the refiners have normally done most of the supplying of dealers on a direct basis. But in the smaller communities and in the rural areas they have relied upon jobbers acting as their agents to supply the branded dealers. Historically these two suppliers of branded petroleum products have relied upon independent dealers to sell their gasoline and they have not been heavily involved in direct retail marketing of gasoline. However, since the beginning of the gasoline shortages in 1973 refiners and resellers have rapidly integrated forward to market product directly that had previously been sold by branded dealers. Government statistics indicate that refiners share of market at retail has doubled from 1972 to 1979 and the growth may even have been more spectacular as noted in the footnote to Table 1. In some states jobber supplied branded product represents 50 percent of the total and nationwide probably amounts to about a third of all branded gasoline. While the government has not compiled the statistics to show the growth in direct marketing by branded jobbers, reports tend to indicate that it has been very rapid and has at least kept pace with the increase in direct marketing by refiners.

The forward integration by refiners into direct marketing represents a major shift in how petroleum products are being sold. Historically, the integrated companies realized most of their profits from their lucrative production operations. Marketing was long looked upon by the refiners as merely a means for cashing in on their highly profitable crude oil. These large companies invested great sums to insure that they could directly distribute much of the gasoline produced from their crude oil and processed by their refineries. It is widely recognized that the large refiners actually constructed too many service stations in their attempt to directly distribute their own gasoline with the consequence that service station investment to the refiners was only marginally profitable, or even unprofitable. However, since large profits had been earned in the earlier levels of the petroleum industry the inefficiency of the retail system was not considered to be terribly important.

It has been largely since the beginning of petroleum product shortages that the refiners have accelerated their move into direct marketing. As demand has exceeded supply for the first time many refiners have grown to recognize that marketing can now become quite profitable and several refiners are endeavoring to integrate forward into marketing and to dominate this final sector of the petroleum industry. With supply and demand now being closely balanced and the profit prospects have at long last improved for marketing, refiners and their jobbers are eliminating branded dealers and integrating forward into direct marketing. As will be shown in the next several sections the suppliers of branded products have used a variety of techniques that have greatly impaired the ability of their dealers to compete and they have unfairly driven many dealers out of business.

CHAPTER II

UNFAIR MARKETING PRACTICES AND PARTIAL LEGISLATIVE RELIEF

This section of the report reviews a variety of techniques employed by the large integrated refiners to closely and unfairly "control" the actions of independent marketers and at times they are used to "destroy" dealers. Since the beginning of the petroleum products shortages in the early 1970s refiners have taken advantage of this unequal bargaining power to integrate forward into direct marketing. Unless refiners are stopped from using the power they derive from integration to destroy retailers, they will dominate all levels of the petroleum industry from the production of crude oil through the final marketing of the product.

A distinguishing characteristic of the branded leasee dealer is that he purchases the branded gasoline and leases the station which he operates from the same party — his landlord supplier. This dual supplier-landlord relationship results in refiners having considerable control over the actions of their dealers. Giving the refiners real power to control the actions of their dealers has been the prevailing practice of granting one year leases, with thirty day cancellation clauses for infraction of certain contract provisions. With the short-term lease, dealers either give in to the requirements of their refiners, or find their leases cancelled.

Refiners use their superior bargaining power to include in their leases conditions and requirements making it difficult for dealers to make independent decisions and to pursue courses of action beneficial to independent operators. The lease and the company representive calling on the dealers closely prescribe how the dealer will operate his station. Some of the obnoxious provisions of this one way relationship include hours of operation, purchases of refiners' TBA, acceptance of company promotions, adoption of refiners' pricing policies, exclusive marketing of refiners' brand of gasoline and the purchase of stated quantities of gasoline and oil from the supplier.

Lengthy testimony has been given over the years regarding how dealers were forced to comply with unreasonable demands of their landlord-suppliers. For example, hours of operation were frequently prescribed that were uneconomical for the dealers; nonetheless, they were required to stay open during nonproductive hours or run the risk of having their leases cancelled. Refiners' TBA was forced upon dealers when often the same product could be purchased for less from independent suppliers of these items. To obtain price reductions and to obtain other concessions such as repair and upkeep of facility, dealers were forced to go along with the company's prescribed pricing policy. Gasoline volume requirement, and prohibition against selling other brands of gasoline through the same tanks and pumps, made it impossible for dealers to seek more economical sources of supply and to sell more than a single brand of gasoline. In addition, dealers were frequently discouraged from buying brands of oil and lubricants other than those sold by their refiner.

With the fear of reprisal, dealers largely complied with the one-sided demands of their suppliers. This caused dealers to make decisions about prices, services, and products and to pay unnecessarily high prices which in many ways were in many instances contrary to their best interests and their ability to continue to operate. Thus, the freedom of action associated with being independent businessmen was frequently denied the branded leasee dealers. The record is replete with testimony of dealers who have made independent judgments contrary to the suppliers' prescribed methods of operations that led to their leases being cancelled. Dealers who have been repeatedly cited by the suppliers for excellence in performance and service to customers have even been cancelled when they have chosen not to go along with unreasonable company policy.

The actions of branded leasee dealers have not only been managed by the power that refiners obtained through the short term lease, but refiners have also taken advantage of frequent lease expirations to cancel and throw out dealers with years of service who have closely followed company operated procedures. The forward integration of many refiners, as will be explained in detail in the next section, was achieved by simply failing to renew the one year lease contract with their dealers. Several of the large refiners have taken advantage of the one-side relationship with their dealers and have sent out wholesale cancellation notices to thousands of dealers telling them to vacate their station upon termination of the one year lease. This included long term dealers who had spent much of their life developing business for their suppliers.

The large integrated refiners have used still other means to eliminate their dealers while integrating forward into direct marketing operations. This set of techniques involved methods of "economic eviction" rather than simply lease cancellation. The purpose of these methods was to discourage dealers from continuing to operate their stations and to force them to relinquish their stations without refiners being required to cancel leases. A crippling blow to many dealers was incredible rent increases. Several of the companies trying to force dealers to give up their stations adopted a policy called "economic rents". Initially the gasoline marketing regulations prohibited rent increases since rents were considered to be a part of product cost and the Emergency Petroleum Act of 1973 stated that normal business practices were not to be changed. The petroleum companies argued against this practice of rent control and won their case in Washington as so often occurs. Historically rent had been from 1½ to 2 cents per gallon and it had not materially changed over the years when the gasoline industry was highly competitive. In addition, refiners effectively earned additional rent from the high dealer tankwagon price paid by their branded dealers. With the application of economic rents, almost overnight companies like Gulf notified dealers that their rents were to be doubled and even tripled. The unprecedented rent increases in many instances made it impossible for dealers to continue in business for they were unable to pass on to their customers this cost increase in the price of gasoline and the services they sold. Thus, for many dealers the rent increase was a crippling blow that forced thousands of dealers out of their stations.

Another method of economic eviction employed by refiners was selling at lower prices through company direct self service operations. In many cases at the same time dealers were experiencing huge rent increases company direct stations were lowering their price relative to the price dealers were forced to charge. What the petroleum companies were doing was forcing up the cost and prices at dealer operations while lowering the price at their direct operated self service units to from three to five cents below the level of the dealer. Worsening the plight of dealers was the shift of their volume to the company operated units. Furthermore, the low price of the company direct stations was often unjustifiable and was supported by subsidization through profits earned at other levels of the petroleum industry. The practice of subsidization further contributed to refiners unfairly building substantial volume in company operated stations at the expense of the branded dealers.

The majors have no magical formula for efficiency that permits them to undercut the prices at dealer stations giving the same level of service. The lower prices are a tactic used to build volume at company direct operated stations, but is likely to be a perishable asset to the consumer. The majors' price cuts are only temporary in nature until they achieve their objective of destroying competition, then they act as cooperating oligopolists recognizing that their long-run joint interest is best served by not engaging in price competition. The majors have alleged that company operated stations are more efficient and hence sell at lower prices than the dealer operated units. As will be seen in Chapter IV much of the price difference between direct operated stations and dealer units results from price discrimination, supply discrimination and market subsidization. Once the large refiners have achieved their objective of market dominance, and when they no longer have to worry about competitive pricing, they will act as homogenous oligopolists strenuously avoiding price competition. To illustrate the short-lived benefit of the major's price agressiveness we will consider (1) the price war instigated by Exxon in Europe, (2) the rapid increase in prices at major direct stations in 1979 when the shortage occurred, and (3) the pricing behavior in small marketing areas where the competition has been eliminated.

The temporary nature of the major oil company's price aggressiveness is illustrated by Exxon's European activities in 1968. To rapidly increase its market share Exxon unilaterally lowered its retail price of gasoline throughout all of Europe by in some cases as much as 20 percent. This sudden price aggressiveness by Exxon was in response to the growth in market share of independent marketers. This price aggressive policy was continued for almost two years over which time independent marketers were eliminated as a significant market factor. In the process of extinguishing the independent marketers Exxon lost a billion dollars in revenues and profit. At the conclusion of this price war period Exxon and other majors raised their retail prices in Europe since they were no longer confronted with serious price competition from independent marketers. (Report of House Subcommittee on *Problems of Small Retail Petroleum Marketers*, October 20, 1976, page 30). Also recall that the petroleum companies attributed much of their enormous earning gains in the second half of 1979 to higher prices charged in Europe.

Mr. Duval Dickey, Vice President of Marketing for Exxon Corporation, USA, testified that Exxon meets only the prices of Texaco, Gulf, Shell, etc. and does not compete with the private brand marketers. Thus, it is only on a temporary basis like in Europe that Exxon engages in an aggressive price action. As a general rule the prices at major brand stations show little deviation. When the extenuating circumstance that has provoked a major such as Exxon into a price war is eliminated, the major then returns his price to the prevailing level of the other oligopolists within the industry.

The tempering nature of the major's price aggressiveness can also be seen in the United States during the period of gasoline shortages developing since May 1979. For two years prior to the gasoline shortage the majors were pricing very aggressively as they were establishing their direct company units. The direct operated stations were generally at a level of three to five cents below their branded dealers. However, once the shortages began in the spring of 1979, the majors gave up their price aggressive actions and rapidly increased their prices to almost the level of their branded dealers. On average from May through July 1979 the major direct stations were only one-half cent per gallon below that of their branded dealer outlets based upon broad based statistics developed by the Department of Energy. The change in price aggressiveness at major brand stations occurred as the shortage developed and the base period was rolled forward to 1977-1978 locking the direct operated units into high volume allocations based upon their large through puts developed during the price war period.

The temporary nature of the price aggressiveness of major direct operation is also apparent to those who study what is taking place in small submarkets within large metropolitan markets. Company operated stations will compete very aggressively as they are developing their volume and destroying nearby competition. Once they have developed large volume and dominate the submarkets, prices are frequently raised to the top of the companies' price range within the metropolitan area. When competition is extinguished within these small submarkets through price aggressive action of the majors they take the same action they did in Europe. Reaching their goal of market dominance, they cease competing on a price basis and sell at the same price of the other majors.

The future of the private brand marketer as well as the major brand dealer is in jeopardy. The large integrated companies have generally refused to sell gasoline to private brand marketers. The private brander has been a major source of price competition to the major branded method of marketing. As a consequence, even though the private branders are very efficient, the majors don't want to supply them and to encourage the growth of price marketing. As a consequence, most private brand marketers and chain operators have been required to purchase gasoline from independent refiners who have in turn obtained some of their supplies directly from the integrated petroleum companies. In addition, some of the majors have sold their product through super brokers who in turn have sold the product to private brand marketers. Only when forced to as a result of having supply they could not market through their own units have they been willing to furnish product in this indirect manner to private brand marketing chains. Given the efficiency of the private brand method of operation, they had been able to scramble for and to obtain supply until the petroleum product shortages occurred. However, the private brander can no longer obtain a competitive supply of gasoline as the majors have taken the product indirectly sold to private branders and are directing it through their company operated stations. The prospect for private brand marketing looked very dim late in 1978 and into the first quarter of 1979. The frequently quoted *Lundberg Letter* raised the question in its

October 13, 1978 issue CAN INDEPENDENT MARKETERS SURVIVE? Since the private brander can no longer obtain a competitive supply of product his future is clearly in jeopardy. Many private branders from the second half of 1978 through the first quarter of 1979 were losing money and were rescued from financial disaster by the gasoline shortage. Large numbers of private branders owe their continued existence to the shortage, but their future looks grim when more normal market conditions return.

PARTIAL LEGISLATIVE RELIEF

The Congressional record developed in the early and mid-1970s underscored two problems faced by dealers selling nationally trademarked gasoline of the major refiners. (1.) Dealers were found to lack economic power to effectively negotiate equitable lease terms and, as a result, refiners forced them to enter into agreements which denied them the authority to make important business decisions. This impeded the ability of dealers to perform as independent competitors. The short-term lease was also found to be a vehicle that permitted large refiners to terminate their dealers and to move rapidly into direct marketing operations. (2.) Branded dealers were also found to be subject to removal through techniques of economic eviction. Rents were rapidly increased to leasee-dealers compelling them to increase their prices and making them less competitive. While this was happening the major brand refiners were rapidly expanding their direct company operated stations and were selling at several cents per gallon below the level of other dealers. As the cost to dealers rose the majors reduced their prices at direct company operated stations which destroyed many independent branded dealers. Furthermore, the prices at the major direct company operated stations were below those that could be cost justified and were subsidized from profit earned elsewhere in the petroleum industry.

Congress considered legislation dealing with both of these problems. Title I of the major legislative proposals dealt with the power associated with a short-term lease and that it could be used to rapidly evict dealers from their stations. Title III of the major legislation focused on the problems associated with the methods by which refiners were expanding their direct company stations and unfairly destroying their dealers.

BRIEF DESCRIPTION OF TITLE I AND TITLE III

Title I of the Act provides for the protection of distributors and retailers of motor fuel selling gasoline under a national trademark by: (a) establishing protection from arbitrary or discriminatory terminations or non-renewals of leases. . . prohibiting the refiners and resellers from failing to renew a relationship or from terminating same, unless such action is based upon a ground specified or described in the Act; (b) requiring compliance with specified minimum rules of notification requirements prior to terminating or not renewing any lease or failing to continue any relationship; (c) assuring dealers of first right of refusal when or if refiners or resellers receive a bona fide offer which it intends to accept for the sale of the premises; and (d) by providing for the enforcement of the Act.

TITLE I ENACTED INTO LAW

DEALERS ARE PROTECTED FROM ARBITRARY LEASE TERMINATION BY THEIR LANDLORD-SUPPLIERS AND FROM CONVERTING THE LEASE MARKETING PREMISES TO OPERATION BY EMPLOYEE OR AGENTS OF THE REFINER.

The original Senate version of Title III of The Petroleum Marketing Practices Act prohibited subsidization of petroleum marketing by refiners from profits earned at other levels of the petroleum industry. Persons who were to be subjected to the prohibition of subsidization were those:

(1) Who are engaged in:
  A. Exploration for crude oil,
  B. Production of crude oil,
  C. Refining of crude oil, or
  D. Wholesale distribution of petroleum products.

The mechanism for prohibiting subsidization of marketing by refiners was to be a comprehensive and complicated "functional accounting" procedure.

The Department of Commerce was opposed to the proposal of using functional accounting to deal with the problems associated with refiners and resellers who own and operate retail outlets. The Department felt that this problem could be better addressed by considering marketing divestiture.

The Justice Department agreed with the goal of Title III of prohibiting integrated petroleum firms from engaging in subsidization of their marketing activity that would lead to the elimination of independent marketers and to higher prices to the consumer. However, the Department opposed the functional accounting proposal and included a strong suggestion that the proposal would frustrate the ultimate objective by establishing a superficially competitive market structure of pricing behavior in the form of a concentrated oligopoly.

The Bureau of Competition of the Federal Trade Commission expressed its opinion that the functional accounting proposal was unworkable. Instead, the FTC suggested, as it had previously recommended, that an effective solution to the problem could be some form of vertical divestiture. The Department expressed a belief that functional accounting legislation cannot address the problem of vertical integration with industry-wide uniformity and with certainty that the rules established are fair and adequate.

TITLE III AS ORIGINALLY PROPOSED WAS *NOT* ENACTED INTO LAW

Congress did substitute in its place a new Title III which required that the President undertake a study of subsidization of marketing by refiners and others and report to Congress no later than December, 1979. This task was delegated to the Office of Competition of the Department of Energy under the direction of Mr. William Lane. Eighteen months was set aside to complete this study. The Office of Competition failed to meet its deadline and asked for an extension until March, 1980. Public statements and unofficial and tentative reports of this Agency raise questions over whether those involved are capable of completing the task. It seems that the Office of Competition fails to understand the delicate nature of the competitive balance in gasoline marketing and that the vertical integrated petroleum companies can act in the short-run to destroy the structure of competition in this industry.

The failure of the Office of Competition to meet its deadline prevented the President from adopting any interim measures as deemed necessary to maintain the competitive viability of the marketing sector of the petroleum industry. Now Congress must consider permanent legislation.

LEGISLATION RESPONSE DEALS WITH ONLY HALF THE PROBLEM

Several Congressional leaders stated that they were pleased that The Petroleum Marketing Practices Act was passed, but they were quick to point out that only one of the two prongs of the problem facing dealers was solved—arbitrary lease cancellation. Unfortunately, the subsidization of marketing by the petroleum companies and their forward integration into marketing was to be further studied and then once again referred to Congress for action. Congressional leaders from both the House and Senate, upon the passage of the Act, emphatically expressed that the legislation only goes part-way and it does not effectively preserve competition in the gasoline industry. The statement of some of these Congressmen relative to the deficiencies in the Act follows:

Congressional Record - House, page H3017, April 5, 1977:

> Mr. Staggers: . . . We need the continued presence of the independent gasoline marketers who care about the motoring needs of their customers and who will continue to provide important consumer services and price competition.

Congressional Record - House, page H3015, April 5, 1977:

> Mr. Seiberling: . . . First of all I would like to say that I think this is an excellent bill . . . However, there is one problem the bill does not address, and I would like to ask the chairman of the subcommittee about it. In the course of looking into the structure of the oil industry — everything from the oil fields through the refineries to the retail establishments — we learned in the Committee on the Judiciary that one of the problems many independent gasoline marketers face is competition from their own supplier-owned outlets which are selling at retail at prices which are often lower than those the independent dealers pay for their gasoline from the suppliers. Obviously that makes it very difficult for them to compete, to say the least . . . I take it that this bill does not address itself to that problem?
>
> Mr. Dingell: . . . the answer to the question is that it does not.
>
> Mr. Seiberling: . . . In other words, there is some unfinished business that the Congress still needs to look into, is that correct?
>
> Mr. Dingell: . . . The answer to that question is yes. The Congress should address itself to these questions separately in the future.

> Mr. Sharp: . . . Like the gentleman from Ohio (Mr. Seiberling), I am concerned that we were not able to find an effective solution to the predatory price problem that has faced many of our dealers. There is no question but that this has been a difficult problem for these dealers. I still hope that we can, through our staff and the resources available to us, work toward some resolution of this problem.

Congressional Record - Senate, page S7156, May 8, 1978:

> Senator Jackson: . . . Title I of H.R. 130 provides basic protection for the gasoline dealer against arbitrary termination of his franchise by his supplier. However, a bill which goes no further than franchise protection goes only half the distance we need to go. The predatory manipulation of prices by gasoline suppliers is a threat just as serious, if not more so, than the threat of franchise termination. This is why I have so strongly supported legislation which goes the full distance and includes by the Title III addressing price discrimination by gasoline suppliers.
>
> Everyone knows how this discrimination works. The incoming mail of my colleagues is packed with letters from gasoline dealers telling the story in the clearest possible way.
>
> The key to the oil company strategy is the company operated outlet. The volume sold through these outlets increased 69 percent between 1972 and 1976. These outlets are the tools with which it enforces greater oil company control over the marketplace.
>
> A supplier subsidizes the price of gasoline through his own direct retail outlets. Nearby dealers must lower their prices. At the same time the supplier demands a higher share of the profits of these independent dealers and insists that their sales volumes increase. Some dealers are driven out of business by the squeeze; their franchises are terminated voluntarily because the dealers are going bankrupt. The supplier takes these stations over.
>
> The result? Greater supplier penetration into retail marketing, larger supplier profits from sales to the remaining independent dealers, and a weakened independent retail sector. What we are seeing in this scenario is the beginning of the end of competition in gasoline marketing. Title I of H.R. 130 provides no defense against these tactics by suppliers.
>
> The strength of competition in the sale of gasoline has and always will depend on the strength of the sector composed of branded and nonbranded independent marketers. These small independent businessmen function in the face of vigorous competition, and the consumer benefits. If this sector is lost or even substantially weakened, competition will suffer and the consumer will be the loser. . .

> I favor the enactment of effective measures to preserve the competitiveness of the gasoline market. We have to go the second mile and address the pricing power of the oil companies. If that can not be accomplished today, it must be accomplished soon in the next Congress. If not, our competitive retail gasoline market is in severe danger.

The Hearing Record that led to the Marketing Practices Act covered the period to mid-1976. Since that time, thd majors have continued to subsidize and expand their direct marketing operations. The Hearings Record that documents the continuation of anticompetitive practices of the major petroleum companies is presented in the next section.

CHAPTER III

THE MOVE INTO DIRECT MARKETING BY SEVERAL INTEGRATED PETROLEUM COMPANIES

This section of the report reviews specific actions of the major integrated petroleum companies which are destroying the structure of competition in the marketing of gasoline. Much of the information cited is from recent government hearings examining development in this area. Information to be presented suggests that Gulf, B.P.-Sohio, Mobil, ARCO, Champlin, Marathon, Hess, Crown, Citgo, Vickers and Texaco have committed themselves to a variety of programs aimed at eliminating independent gasoline marketers and replacing them with direct company operations. Some complaints were also heard about Exxon, Phillips and Sun but the extent of their actions are limited—they could be characterized as "testing the water". At the other extreme, only a few, or a limited number of complaints were heard about American, Socal, Union, Conoco and Shell. These companies could be characterized as "watching and assessing" the nature and growth of direct marketing. However, the "hold" put on the expansion of direct marketing could rapidly change under the following conditions: (1.) those with direct marketing force the others to join in the trend, (2.) more important problems such as crude oil decontrol and the windfall profit tax issues are satisfactorily resolved, (3.) marketing is decontrolled making it easier to make sweeping changes at retail, and (4.) companies are biding their time recognizing that they can eliminate their dealers and integrate forward when the time is right.

From across the country information was presented regarding how Gulf has eliminated thousands of their dealers and has replaced them with high volume, company operated stations. For example, Stephen Shelton, Executive Director of the Southern California Service Station Association, explained how Gulf eliminated, since 1974, all but "10 out of 600" of its Gulf dealers in California and converted many of them to direct operated Economy and Solo Stations (See Transcript, Office of Competition, Hearings in Los Angeles, California on July 17, 1979, pages 44 - 70). Shelton stated that Gulf employed a variety of unfair, unethical and illegal methods to "destroy the branded dealer organization in order to facilitate the takeover of their stations". The unfair practices used to destroy dealers included price discrimination. Dealers were charged the higher "dealer tank-wagon price" (DTW), while company operated stations purchased basically the same product at the lower wholesale "rack price". Shelton claims that even with a favored buying price, that many of the direct operated units lost money and were "subsidized" by other profit centers. With dealers having no other source of income, they were gradually destroyed by the non-competitive position in which Gulf placed its dealers. The ruthlessness with which Gulf eliminated hundreds of independent dealers was shown in a prime time television documentary.

Similarly, Mr. Oscar Carlin, the Director of the Southwest Ohio Gasoline Dealers Association testified that starting in 1973 Gulf sent lease cancellations to 50 dealers in Dayton, Ohio, (See Transcript, Office of Competition, Hearings in Dayton, Ohio on August 28, 1972, pages 23 - 46.) Many of these dealers that were abruptly terminated had been with Gulf from

5 to more than 10 years. Gulf subsequently converted several of these units to high volume, direct operated self service stations.

In Atlanta, Georgia, Jack W. Houston, representing the Georgia Association of Petroleum Retailers, explained how many Gulf dealers had been, and were being, destroyed by "economic eviction" as a result of unfair competition from Gulf's direct operated stations. (See Transcript, Office of Competition, Hearings in Atlanta, Georgia on August 28, 1973, pages 7 - 61.) Among the factors cited by Houston contributing to the destruction of Gulf dealers were sudden rent increases of 50 - 300 percent, larger allocations for company operated units, and subsidization of direct units marketing losses. In the same hearings Dr. Fred Allvine, Professor from Georgia Tech, explained that hundreds of stations had been taken back from Gulf dealers and were leased to Munford Convenience Stores and a few other convenience store chains. (See pages 93 - 112). While the convenience stores leased and operated the units, Gulf controlled the price of gasoline at the units and received the revenues from the sale of gasoline. This indirect method of operating stations has been expanded from Georgia to Texas and to other markets. In addition, Gulf has torn down many dealer service stations and has replaced them with high volume, self-service units. These are either directly operated by Gulf, or indirectly controlled through arrangements with convenience store chains.

Mr. John Calhoun, Director of the Texas Oil Jobbers' Association, further comments on what he fears to be Gulf's and other petroleum companies' plans to diminish the role of independent jobbers in the distribution and marketing of gasoline and other petroleum products. (See Transcript, Office of Competition, Hearings in Houston, Texas on September 18, 1979, pages 22 - 34). He quotes from OIL EXPRESS dated September 3, 1979 that "Gulf plans to eliminate jobbers and commission agents in most metropolitan areas, including Atlanta, New Orleans, Houston . . ". The article goes on to state that Gulf's action will not only affect jobbers or wholesalers across the country, but that "the company also plans to close more metropolitan units and convert others to high volume, salary operated stations" and this means a continuation of the program of eliminating dealers.

The state of Ohio has been swept in recent years by the direct operations of Sohio and Marathon — two of the largest marketers in the state. In addition, Gulf and Sun have expanded their direct operations in Ohio. The activities in Ohio illustrate how quickly forward integration can occur if the practice is permitted to go unchecked. With the Sohio rapid conversion of most of its volume from dealers to company direct operations, a chain reaction was set off that resulted in forward integration into marketing by several of the major integrated refineries.

Mr. Robert G. Griffin, Vice President of Sohio, was very candid in explaining his company's rapid movement into direct marketing. (See Transcript of House Small Business Subcommittee on Antitrust, Hearings in Washington, D.C. on September 20, 1979, pages 8 - 97.) Through termination notices and from economic attrition, Sohio eliminated several hundred of its dealers in Ohio in just a few years. Major investments were then made in modernizing these units and converting them to direct operated, self-service units. The volume that used to be sold by dealers was consolidated in fewer high volume, direct operated, company stations.

Mr. Griffin was asked about the complaints of several one-time Sohio dealers about the abrupt termination of their leases and conversion of the stations to company direct operations. (See pages 42 - 44). Mr. Griffin explained that it was not Sohio's policy to terminate high volume dealers, but that it was more of a matter of whether the station volume potential was being achieved. The following discussion between Mr. Griffin and Congressman Bedell occurred:

> Mr. Griffin — Our approach to evaluating which way we think these locations should operated is based on our appraisal, based upon a lot of experience and research, as to what the investment should return, and what the volume potential of business is in and around each of of these locations.
>
> I am sure if we thought a station had 100,000 gallons a month potential and we had a dealer doing 45,000 we might have a difference of opinion about whether he (the dealer) is successful or not.
>
> Congressman Bedell — Then in that case your determination would prevail; is that correct?
>
> Mr. Griffin — Certainly. *We own the property and all the equipment and have all the investment.* (emphasis added).

As Sohio rapidly converted its dealer system to company operated stations other integrated companies joined the movement. (See Transcript, Small Business Administration, Hearings in Dayton, Ohio on August 28, 1979, pages 92 - 103). Testimony was presented that starting in 1973 and 1974 Marathon's attitude towards its dealers rapidly deteriorated. Since that time Marathon took action that directly eliminated or gradually drove most of its dealers out of business. What happened since that time is illustrated by the statement of Mr. Hall of the Small Business Subcommittee.

> It is my understanding that in 1974, the Marathon Oil Company had 37 stations in the Dayton area, and there are presently six dealer operations with the remaining 32 company operations of Marathon. All Bonded locations are owned by Marathon Oil, and are also company operations, and they offer no repair service to motorists.

The observation about the timing of change in attitude with respect to dealer operations was attested to by Mr. Norman G. Nicholson, Vice President of Marketing for Marathon. (See Transcript, Office of Competition, Hearings in Fort Wayne, Indiana on August 21, 1979, pages 29 - 57). He stated that there was no significant move into direct marketing until 1974. However, by mid 1979 Marathon had about 700 direct operations scattered through 9 states. Mr. Nicholson was asked about details of the direct operated Speedway units. First he indicated that these company operated stations were charged the rack prices, which was considerably lower than the tankwagon price charged to dealers. He was then asked whether the Speedway units were subsidized in the period from 1976 - 1978 to determine if below cost selling had contributed to dealers being forced out of business. Mr.

Nicholson indicated that such information was confidential, but that this data would be provided as "part of your subsidization study which we embrace wholeheartedly". Since that time Marathon's attitude changed since it was one of the companies that refused to give the Office of Competition the data that it requested for the subsidization study.

Sohio's plan for direct operations also includes its B.P. operation centered in New England and the mid Atlantic States. According to the *B.P. Northeast Project: Report and Recommendations*, dated May 9, 1973, a program is planned for conversion of many of its jobbers and dealers to direct company operations between 1974 and 1982. The rationale for extension of direct operations in this case is because of low market share and poor brand recognition. In the case of Sohio, the exact opposite conditions exist since the Sohio brand dominates the market. So apparently, direct operated outlets will be pursued by integrated refiners regardless of the strength of the brand in the marketplace.

The three alternatives which the B.P. Report analysis contained are presented below along with the recommended strategy.

> In arriving at our recommendations we have considered that B.P. has three main alternatives with respect to marketing in its remaining areas. The first is to divest the rest of our marketing assets and become solely a wholesaler of gasoline. The second is to remain a conventional marketer and sell directly and through distributors and marketers. The third is to convert our direct marketing into a Gas & Go approach.
>
> We recommend that B.P. adopt a Gas & Go marketing approach in its major metropolitan areas.

While spokesmen for the major integrated petroleum companies deny designing practices to squeeze dealers out of stations, the B.P. study goes into considerable detail of the techniques that can be used to eliminate the dealer. (See quote below.) Also note that they intended to proceed in a manner "without alerting" the dealer organization to their ultimate plan. The methods described to drive dealers out of stations include the all familiar techniques of rapid rent increases, change in credit terms, ceasing advertising support and not reissuing credit cards. The other principal methods used to destroy dealers are selling below cost in direct operations and favoring direct operations with large allocations.

The quote is as follows:

> The two items of highest priority are to secure possession of those units we desire to use in Gas & Go programs and to commence the divestment of other outlets. There are several things we can do to assist us to continue the conversion of desired units to I-Manager and Salary wherever possible. A conversion to I-Manager and some Salary operations has been underway for reasons which have nothing to do with the Gas & Go program, and we now have eight proposed Gas & Go stations in Washington and seven in Baltimore which are so operated. *A continued effort in this field will help solve the possession problem without alerting the dealer organization to our ultimate plans.* There is also the opportunity

> to effect mutual cancellation of leases, provided the date is a few months in the future. Experience demonstrates that many DR's are willing to seek new locations provided they are given the opportunity to relocate without suffering the loss of income in the interim. Now that we are aware of our legal problems, we should pursue this possibility. Small amounts of reimbursement to the dealers may also induce them to vacate our stations in some cases. Usually this will be done in the form of paying for the moving of the dealer's inventory and equipment or the forgiveness of small indebtedness. These were requests which we refused in Philadelphia which hindsight indicates we should have agreed to as an alternative to legal action or delay in obtaining possession.
>
> In addition to actions with respect to individual DR's, there are some general actions we should take which will encourage the DR's in our Gas & Go stations to seek other locations. *The first is to announce a new DR rental policy which will make a specific charge for the non-gasoline facilities being leased.* This can be additional to a gallonage rental or be in the form of a minimum which is high enough to make the gallonage rental irrelevant. *Since this can be established on a specific stations basis, it should assist us in obtaining those units we want without driving off those dealers we desire to retain.* Another change which should be instituted immediately is to require dealers to forward credit tickets to Cleveland for reinbursement, rather than grant the DR's immediate credit at the local level. Both of these changes will increase our profits in the short run, as well as assist us in obtaining possession.
>
> *The abandonment of the ADS delivery system and the institution of C.O.D. deliveries should also be instituted, but because of the impact of this on the dealers, it should not be done prior to the fourth quarter of this year.*
>
> We should terminate our advertising soon after the program is approved and also stop reissuing credit cards. When we think we have done all we can about possession of individual stations, we should probably make a general announcement indicating that we are ending our conventional marketing from continuing to operate. The wisdom and timing of such an announcement should depend on our divestment efforts, since we do not want dealers in units to be divested to depart prematurely. (emphasis added)

Any person skeptical about the intentions, plans and methods of the larger petroleum companies to destroy their dealers should study the *B. P. Northeast Report*. The 1982 goal of the B.P. plan is to market directly 50 - 75 percent of the gasoline they refine.

Atlantic Richfield describes in some detail its plan to eliminate most of its 500 Commission Agents that were located mainly in the Central and Western areas of the country. The independent Commission Agents were responsible for marketing approximately 8 per cent of the product marketed by ARCO.

These Commission Agents primarily marketed petroleum products in smaller and rural areas. ARCO determined that it would be more profitable for the company to replace the Commission Agents with a direct company marketing operation. ARCO explains in its report that prior to the petroleum products shortages and the marketing regulations when the market was competitive that the company had not been able to eliminate its commission agents.

> . . . any previous attempts to improve profitability by substituting a completely Direct Delivery system for the existing Commission system simply resulted in the former Commission Agent performing the same function for a competitor. Because of the Commission Agents local relationship with a customer he was usually able to persuade a great majority of them to purchase from which ever competitor he was then representing resulting in a serious loss of volume in overall revenue.
>
> . . . we are, under product allocation obliged to continue to serve all existing customers. . . product allocations will also minimize risk of loss of desirable volume during these next few years.

As explained, ARCO decided that the marketing regulations would permit it to eliminate Commission Agents with a minimum "risk of loss of desirable volume" The ARCO Commission Agent report spells out in detail in what was referred to as a "Termination Schedule" when and which Commission Agents were to be eliminated during 1974 and 1975. These Termination Schedules marked 465 Commissioned Agents for elimination. [The material above was presented in a report of Atlanta Richfield Company-Product Division "Bulk Plant Profitability Project Program AFE."]

Other majors have similar plans by which they describe their goal of eliminating independent dealers and jobbers and going to direct marketing, but these plans are closely guarded and, unfortunately, not part of the public record.

In addition to Gulf, Sohio-B.P., Marathon, and ARCO, other integrated petroleum companies are moving rapidly into direct marketing operations. Hess has cancelled leases or otherwise taken over most of their dealers in Atlanta, Miami and Tampa and this practice has been extended into several other marketing areas. Testimony was given that company representatives used binoculars to spy on stations and took pictures in search of contract violations which could be used to terminate dealers. Similarly, Crown Petroleum has taken over all of their dealer stations in Virginia and most of their dealer operations in Georgia. In 1972 in Virginia, Crown had 27 stations of which 22 were dealer operated. In 1979 Crown had 27 stations all company operated. Furthermore, Crown has been rapidly building new, high volume facilities which have all been reserved for direct company operations.

Citgo has embarked on a program of direct operated stations over the last five years with the following results. (See Transcript, Office of Competition, Hearings in Boston, Mass. on September 25, 1979, page 59.) The company now direct markets 25 percent of the gasoline it refines through 700 gasoline outlets of two principal types. Three hundred are newly constructed, high volume, Quick Mart, convenience-gasoline operations. In Atlanta, Chicago and other markets Citgo terminated most of their dealer leases and replaced them with their direct operated Quick Marts. For example, in Atlanta there is only one full serve dealer remaining while a few years ago there were more than 20 independent dealers, and in the entire state of Florida there are only three full serve dealers left out of a total of 85 outlets. In addition, Citgo, like Gulf, has a contract with Munford convenience stores involving around 300 units. We have been informed that while Munford collects the money, the price of gasoline is controlled by Citgo.

Throughout much of its marketing territory Mobil has converted a number of its former dealer stations to direct operated secondary brands including Sello, Buy Lo and Reelo. Mobil dealers charge that these secondary brands are selling at prices within a few cents of what they pay wholesale and that they couldn't be covering their cost. In addition, Texaco has developed a Five Year Plan which indicates the company's intention to terminate several high volume jobbers that sell Texaco gasoline to price aggressive "open to purchase" dealers. In the midwest Sun has reopened many of their closed DX and Sun stations as direct company operations with larger allocations than when they were operated by dealers.

Champlin Petroleum company operating in the midwest provides one final illustration of the wholesale cancellation of dealers and the integration of a refiner into direct marketing operations. In 1976, Champlin cancelled the leases of its 75 dealers in the greater Kansas City area and in surrounding communities. (See Transcript, Office of Competition, Hearings in St. Louis, Missouri on August 27, 1979, page 139; Hearings in Houston, Texas on September 18, 1979, page 135; and Hearings in Memphis, Tennessee on October 10, 1979, page 140.) The stations were then remodeled and opened as direct company operations. In addition, Rohr, a Champlin jobber found it impossible to compete with the extremely low priced direct operated Champlin stations and was forced to find another supplier. Rohr further indicated that Champlin was charging his company a wholesale price near to what Champlin's direct operated stations were selling for at retail. Similarly, Champlin cancelled the leases of its dealers in Omaha and Fremont, Nebraska and converted them to company operated retail units.

The speed with which several of the companies previously mentioned expanded into direct marketing is revealed by a recent report of the Office of Competition. The direct marketing by Gulf, Marathon, Clark and Sohio-B.P. increased on average 521.4 percent from 1972 to 1979. The direct marketing volume of Citgo, Mobil, Crown and Hess grew by 432.3 percent over the same period of time. (See Table 3.) When those refiners who have been in "a hold pattern" on direct marketing decide to make their move, it can be very swift as the experience with the eight companies reveal.

TABLE 3

Who Accounts for the Volume Increase in Refiner-Operated Retail Outlets Among the Leading 28 Refiners (gallons of Gasoline)

	January		Difference	Percentage Gain
Refiners	1972	1979		
Gulf Marathon Clark Sohio-BP	58.3	362.3	304.0	521.4%
Citgo Mobile Crown Hess	25.7	136.8	111.1	432.3
TOTAL ALL 28 REFINERS	458.0	925.8	467.8	101.1%

Source: Energy Information Administration Form P-306

Reprinted from "Trends in Company Stores" by Robert N. Fenili and James B. Delaney, Office of Competition, D.O.E., December, 1979, page 4.

CHAPTER IV

SUMMARY OF METHODS USED BY THE INTEGRATED PETROLEUM COMPANIES AND THEIR RESELLERS TO DESTROY SMALL BUSINESS COMPETITION.

The prior section reviewed the fact that several of the large integrated petroleum companies are set on a course of action to eliminate their independent dealers and to integrate forward into marketing of gasoline. This section will explain in more detail the techniques that they are using to destroy small businessses. The impression is often given by the majors that independent dealers are suffering since they are not as efficient as large businesses. It will be demonstrated that independent marketers are as efficient, or are more efficient, than the refiners if they are given the opportunity to compete on equal terms with the integrated companies.

THE DEALER TANKWAGON PRICING SYSTEM

The branded leasee dealers purchase gasoline at the "dealer tankwagon" (abbreviated D.T.W.) price. This is a long standing pricing system used by the landlord-suppliers to discourage price competition by their dealers at the retail level. This price system is structured, as will be explained, to force most branded dealers to emphasize service and other non-price methods of marketing. Historically, leasee dealers have been charged about 4.5¢ more per gallon than the price paid by the branded jobber. In addition, leasee dealers have been required to pay an additional 1.5 - 2.0¢ more per gallon of gasoline as rent on the service station. What the D.T.W. rent pricing method does is to create high variable occupancy cost to the dealer before the dealer includes a margin to cover utilities, interest, promotional and other operating costs.

The 6.0-6.5¢ per gallon occupancy cost of the branded dealers is in many cases more than the total cost of the private brand marketers and direct operated outlets of branded jobbers. Since the private brander and jobber own their own stations, many have been able to lower occupancy cost to 3¢ or less per gallon of gasoline by selling on a low price, high volume basis. Add another 3¢ per gallon to cover operating cost and the total cost of doing business by private branders is close to 6¢ per gallon — approximately what the majors charge their dealers to occupy a station.

It is simply not the case, as spokesmen for major refiners have inferred, that dealers are inefficient and hence sell at higher prices. Given the nature of the D.T.W. pricing system, leasee dealers have had little choice other than to compete on a non-price, service basis.

Further contributing to dealers being forced to sell at higher price than company operated stations have been enormous rent increases of from 50 - 300 percent in recent years. Also dealers are increasingly required to pay for station maintenance and to pay sooner for the gasoline they purchase. All of these changes plus the normal inflation factor have driven up dealer costs and prices. Additionally, many leasee dealers are only able to purchase from their refiner 70, 80, or 90 percent of the gasoline they sold in the 1972 base period year. This means that dealers have fewer gallons over which they can spread their operating costs and as a consequence are required to further increase their margins and prices. Given these recent developments, and adjustments for inflation, dealer operating margins have doubled over the past few years.

ILLEGAL MARGIN CONTROL

One of the long standing methods used by refiners to control dealer operations and profitability is margin control. Two general techniques have been employed to force dealers to reduce prices to levels detrimental to them, but profitable to refiners. One of the frequently used methods is to harrass and threaten dealers with lease cancellations or to deny dealers other valuable services unless they lower their prices. The second primary method used to control dealer margins and profitability is company operated stations. Strategically located company operated units can post low prices and force dealers in surrounding areas to reduce what they charge for gasoline.

The Judicial Branch of the Federal government recognizes that a supplier can exert unfair pressure on dealers forcing them to sell at price levels detrimental to small businesses operation. Both the Justice Department and the Federal Trade Commission were successful in their suits against ARCO for illegally interfering in the pricing of product at their leasee dealer stations. The FTC issued its final order against The Atlantic Refining Company on December 6, 1965. This order prohibited ARCO from:

> (1.) Establishing, maintaining, continuing, cooperating in, or carrying out, or attempting to do so, any plan, policy, program or any consignment policy in combination with any other person or persons not parties hereto, for the purpose or with the effect of enabling respondent to establish or fix the prices, terms or conditions of sale at which its gasoline is to be resold by a dealer after purchasing from respondent.

The final judgment of the Justice Department against The Atlantic Richfield Company was entered on August 12, 1971. ARCO was:

V

> . . . enjoined and restrained from entering into or adhering to any agreement, arrangement or understanding with any. . . dealer to fix, maintain, or stablize prices at which any. . . dealer shall sell gasoline; . . . for a period of five (5) years from the date of entry of this Final Judgment.

and restrained from:

VI

> (2.) coercing any of its. . . dealers to adhere to such defendants suggested retail price for gasoline provided, however, . . . nothing in this Judgment shall prohibit any defendant from unilaterally suggesting prices to its. . . dealers for the sale of gasoline to third party persons;

In 1972 ARCO presented a program designed to improve the profitability of its marketing operations. To improve performance the report recommended that ARCO concentrate on:

> ". . . the Cost of Doing Business"
>
> ". . . Dealer Margins"
>
> ". . . Stabilize Retail Price Levels".

Specific steps to accomplish the above included "Reduce Dealer Margins", "Raise D.T.W. . . (Past five (5) years shows this hasn't been successful)", and "Revise Price Structure. . . Eliminate Subsidy". Following the preparation of this report ARCO along with other refiners did "Stabilize Retail Price Levels", "Raise D.T.W.", and "Eliminate Subsidy".

In the week around August 15, 1972 all of the large refiners on the West Coast simultaneously ceased giving price allowances to their dealers and the retail prices stablized. A short while after the stablization of retail prices, the D.T.W. started increasing at an unprecendented rate.

Beginning around the middle of 1974 ARCO implemented policy aimed at "reducing dealer margins". An ARCO memorandum of July 15, 1974 stated:

> It is now assumed that all personnel have a full understanding of what is required during the next six (6) months.
>
> The current mandatory priority is the selling of gasoline entitlement. I'm sure we will have no failures in this most vital area. Be certain to treat this matter on account by account basis; never assume that a dealer will make entitlement until such time as he does. Your constant vigilance of hours and *prices* and the District ARPE-54 will guarantee this for you. (Emphasis added)

The record shows that over the next six months ARCO's sales representatives exerted continuous pressure on dealers to lower their prices and margins. Those sales representatives having dealers with low prices were praised while those having dealers selling at higher prices were instructed to correct the situation. For example, on December 8, 1975 a supervisor for ARCO wrote to one of his representatives as follows:

> We have problems in your area! — I've indicated where I believe we need to establish a threshold price. Please concentrate on these units starting Monday 12/8.

Dealers selling for 53.9 were indicated as "ok!" and "great!" Those dealers selling for 56.9 through 59.9 were noted and marked for special attention by the sales representative. Later this same sales representative was instructed that the "THRESHOLD IS 51.9 — LET'S DIRECT OUR EFFORT TOWARD THAT. . ." Of the 18 stations supervised by this sales rep only one was at 51.9 cents at that time, while most were 3 - 5 cents higher. Subsequent reports of this sales rep showed that his supervisor was continuously pressuring him to convince his dealers to lower their prices and their margin. The supervisor noted that volume of individual stations had fallen below a year ago and that "We need a price". The pressure on the sales rep continued as indicated by the following note from his supervisor:

> Let's not let up on your threshold pricing campaign in your area. We have 12% of your eligible dealers in threshold. (I don't count PSI units.) I need *at minimum 60%* from you . . .

PSI units were direct company operated stations where prices were automatically lowered to the level desired by the company.

According to affidavits of several ARCO dealers, they were threatened that unless they lowered price and increased volume, their station would be "red-lined" and closed. Others were told that their leases would not be renewed unless they improved their volume which required them to lower prices. A letter allegedly written by an ARCO representative to his dealers explained that even though ARCO's price to dealers had been among the highest in the industry, the company nonetheless expected its dealers to purchase and sell all of their allocation. It was pointed out that several dealers were not helping the company move their allocation and the field rep asked the dealers to commit themselves "to selling the gas regardless of the hardship involved". If not, he suggested that they should "get out and look for something else". He went ahead to state that "I don't like being a cop, writing lease violations, conducting hours checks, etc., but I get paid to do these things and I'll do them".

To further encourage dealers to lower price ARCO developed a special rental program for self-service and mini-service operations in early 1975. Once a dealer reached 85 per cent of his monthly allocated gasoline entitlement, he was eligible, if he so chose, to enter into a special program if he would dedicate one island for self-service or mini-service. Then ARCO encouraged dealers to sell gasoline at the limited service islands at extremely low margins which did not cover the cost of doing business. The rent subsidization program and the low prices at which dealers were instructed to sell the limited service gasoline contributed to a hyper-competitive market situation.

ARCO's enforcement of lower street prices and margins and its special limited service pricing program put tremendous financial pressure on ARCO dealers and dealers of other brands. As ARCO enforced its margin control program, the average price at its stations fell in comparison to other major brands until they were close to the lowest in price in the marketplace. This intensification of competition at the retail level forced the permanent closing of thousands of independently run service stations.

It has been shown that ARCO has controlled the retail price of gasoline, to the detriment of dealers, and in violation of the Consent Decree.

SPECIAL CIRCUMSTANCES AND THE FORWARD INTEGRATION OF PETROLEUM COMPANIES AND RESELLERS INTO DIRECT MARKETING

An analysis of the movement of the integrated petroleum companies into direct marketing must be put into the proper time perspective. The market conditions before and since 1972 are strikingly different and it has primarily been since 1972 that the majors and their resellers have made their moves into direct marketing.

Before 1973 gasoline marketing was highly competitive and there was strenuous service and price competition among branded and private brand marketers. Refiners granted temporary allowances to branded dealers so that they would lower their prices relative to those charged by private brand marketers. To survive in this intensely competitive environment required a considerable degree of business skill for both branded dealers and private brand marketers. Because of the intensity of competition there was little excessive return for anyone in gasoline marketing.

The turning point in the traditional competitiveness of the gasoline industry was mid-August 1972. The major refiners led a nationwide price restoration at that time. Several of the major petroleum companies ceased, and others starting rapidly phasing out, the practice of giving temporary price reductions to their dealers so they could lower prices in response to private branders. Overnight a sudden calm came to many markets—a condition that had not been experienced in decades. While price competition continued in some markets where there was ample supply, within 6 months to a year following the price restoration it too had ceased.

Shortly thereafter, private branders experienced as a result of a curious set of circumstances cutbacks and terminations of their supply. With the price aggressive private branders neutralized, the majors no longer felt compelled to grant price protection to their dealers to help them remain competitive. With a tightening supply situation, and the private branders no longer a threat, the majors gave up the practice of granting their dealers price allowances, and commenced to rapidly expand into direct marketing and selling at much lower prices than their dealers.

Thus, it should be understood that *it was in this new environment where there was relatively little price competition among the major brand dealers and the private brand marketers that the majors made their move into direct marketing.*

VOLUME DISCRIMINATION

It is emphasized again that the majors did not make a significant move into direct marketing prior to 1973 when the retail markets were highly competitive. There is some indication that a few companies tried to integrate into direct marketing in this earlier period, but that they were losing so much money that they returned to dealer operations. What happened since 1972 is that the United States experienced a domestic followed by an international shortage of petroleum. As a consequence, the normal workings of competition through supply and demand were severely blunted. In times of real shortage, power in the industry shifts to those who control supply, and this is largely the major integrated petroleum companies. It is an important premise of this report that most of the integrated suppliers have used their power as a supplier to extend their control over the marketing end of the business. Several of the majors foresaw that with tight supply conditions, marketing would at long last become a profitable activity. Now, rather than letting their dealers benefit from the improved market opportunitites, they are terminating dealers through a variety of unfair and anticompetitive means and moving to direct marketing of their gasoline. Thus, branded dealers who earned in most cases only marginal wages during the decades of highly competitive market conditions were abruptly being terminated by their landlord-suppliers prior to the passage of the 1978 Petroleum Marketing Practices Act and are now subject to economic eviction.

Some of the majors have indicated they are integrating into direct marketing since they can do the job more efficiently than their dealers. As evidence of this fact they cite statistics that show company operated stations have been selling gasoline from 3 - 5¢ below the level of their branded dealers. Initially, as the majors moved into direct retail marketing with self-serve outlets, they disclosed a cost savings, full service vs self serve, of 2¢ to 2½¢ a gallon.

There are two questions that must be examined concerning the representation that majors are more efficient marketers. (1) How have the majors obtained this efficiency? (2) Will prices be lower over the long-run if majors complete their takeover of marketing?

There is nothing magical about the majors direct operations which makes them more efficient than marketing through branded dealers or private brand marketers. In fact, as was previously explained, the majors were not interested in direct marketing in the period through the end of 1972 when they manipulated the marketplace and it was very competitive. There is a dual explanation of the majors' recent expansion into direct marketing. (1) They have forced their units in direct marketing with large allocations and (2) they have subsidized their marketing operations to build high volume throughputs. This second point will be discussed later in this chapter in a section entitled "Marketing Subsidization".

In times of shortages one of the ways to improve operating results is to funnel increasing gallonage through favored stations. Due to the high fixed cost of gasoline marketing, the additional volume drives down the cost of doing business. When equal access to additional volume is denied as the majors have to their dealers, the dealers are placed at a decided disadvantage in staying competitive. From January 1975 through July 1978 average monthly throughput of refiner direct stations increased 28,500 gallons in comparison to an increase of only 6,200 gallons at branded dealer stations versus a decline of 15,268 at private brand stations. Several of the refiners and their jobbers took the gasoline from closed dealer stations and ran it through their company operated units.

In some instances the refunneling of product through company operated stations was often achieved in a technically legal manner. The large refiners with their extensive legal departments were able to take advantage of the complicated administrative procedures to file for large allocations for their company operated direct units. They would file the necessary forms with the DOE (17s and 99s) and would be granted larger allocations than their dealers received. Additionally, some companies simply took advantage of their position as suppliers and channeled uncommited product through their direct operated stations as it became available on a monthly basis. Thus, refiners were able to take advantage of the shortage conditions and regulations to establish high volume direct operated units.

In many instances the majors have simply closed dealer stations, torn down the buildings and replaced them with new, self-service, units. But instead of offering these modern facilities to dealers, they direct operate them as high volume, self-service stations. In other instances, the majors have had virtually unlimited supply for rapid expansion of direct marketing subsidiaries into new marketing areas. When it comes to obtaining an allocation for the new stations the majors are "willing suppliers" to their own subsidiary units. It is very common for refiners to apply for and receive allocations of 150,000 to 250,000 gallons which is 3 to 5 times what is supplied to a good dealer. In other cases the majors merely reopen and direct operate one-time dealer stations with allocations double what the dealer had received.

The majors are not by nature more innovative or efficient than independents in marketing gasoline. In fact, the pioneering and early development of high volume, low price, self-service gasoline marketing was done by private brand marketers, and not by the direct marketing operations of the integrated petroleum companies. Private branders also took the lead in developing the diversified self-service concept. Now the public can purchase gasoline along with convenience store and dairy products. These combination operations spread cost over two businesses creating a highly efficient operation. With a fair "rack price" and not the padded "tankwagon price", the branded dealer as well as the private brander can be highly efficient.

The integrated companies have not led in the development of more efficient retail marketing methods, nor are they necessarily better operators. Occasionally, an officer of an integrated petroleum company will level about his experience with direct marketing. For example, Bruce McCall, Vice President of Marketing for Continental, stated that his company had tried direct marketing, but that the independent is much more efficient and "can run circles around company direct operations" (*Oil Week* Marketing Seminar, Atlanta, Georgia, December 5, 1979). W. J. "Bill" Bittles, Vice President of Retail Sales for the Shell Oil Company, has repeatedly stated that the dealers are the most efficient way of marketing motor fuel to the consumers (*The Spokesman*, December 1979 issue). Amoco Oil Company has likewise stressed the efficiency of their dealers. If not efficiency, then why the forward integration of the large petroleum companies into marketing?

There is no doubt about the highly competitive nature of gasoline marketing prior to 1973. With tens of thousands of branded and private brand dealers all eager to attract customers, gasoline marketing used to be highly competitive — no single dealer could afford to give competition too much of a price or service advantage or he would lose his volume. Now what happens as markets become increasingly dominated by major direct operations as has occurred in Ohio? Who is going to see that monopoly prices are not charged by the few firms that dominate the marketplace and that customers have the choice of services they desire? Oligopolists know that their joint interest is best served by cooperating rather than engaging in price competition. For example, until the last few years the majors' dealer tankwagon prices were either exactly the same or varied by only ¼¢ to ½¢ per gallon.

When major brand dealers and private brand marketers are weakened or destroyed, who is going to exert service and price competition? A principal motivation for direct marketing by integrated petroleum companies is that they see improving opportunity to increase price and make large profits in retail marketing. It is ridiculous to think that their move into direct marketing is an altruistic pursuit. They are profit motivated and always looking for emerging profitable opportunities. If they can eliminate the competition from major brand dealers and private brand marketers, they can then dominate the marketplace. There will be no effective market pressures to keep the petroleum companies from raising price to whatever level they find mutually advantageous. Now instead of thousands of independently determined prices and service levels a few majors will set prices and determine what services they want the consumers to have.

Partial answers have been provided to the two questions raised earlier about (1) how did the majors obtain their efficiencies and (2) will prices be lower in the long-run. The majors are not really more efficient marketers than independent dealers, but instead have favored their stations with higher volume allocations permitting them to lower their costs and to increase prices. The opportunity for the majors to increase prices when dealer competition is eliminated certainly exists. The majors are not integrating into marketing anticipating giving away potential profits. Many of these integrated firms look to the future when there is less competition and when the prospects appear good for rapidly increasing prices and profits.

IMPROPER USE OF JOBBER MARGIN

The major integrated petroleum companies have historically marketed a majority of their gasoline through (1) *leasee* dealers (ie. the "supplier" owns or otherwise controls the situation) and (2) *open to buy* dealers (ie. the dealer is an independent third party owns or controls the station). In addition, the majors have hired the services of brand jobbers to market gasoline in smaller markets and on occasion to market gasoline in the larger markets. The branded jobber has traditionally operated in a manner similar to the majors of selling gasoline to both (1) *leasee* dealers and (2) *independent* dealers. (See Figure 2 in Chapter 2.)

Generally jobbers own or control stations which they lease to dealers. They also transport and sell gasoline to their leasee dealers at the tankwagon price. In addition, jobbers sell and deliver gasoline to "open to buy" dealers and they give discounts of from 1 - 3 cents off the dealer tankwagon price since the customer has made the investment in the franchise. Most jobbers have operated in this manner and have proven to be adept resellers of major brand gasoline. For the marketing services rendered jobbers have normally received from 3.5 cents to 4.5 cents per gallon of gasoline.

Unfortunately, some jobbers have taken advantage of their special buying price and have used it to develop high-volume, direct operated stations. Starting with a four cent buying advantage, certain jobbers have developed high volume, low price stations and have integrated forward into direct marketing like their suppliers have. Frequently, when jobbers have gone to direct marketing they have raped the branded leasee dealers with which they compete because of the favored buying price with which they start. Testimony was given that in Atlanta a Phillips jobber, starting with the advantageous buying price, was direct operating stations selling within a cent or two of what leasee dealers had to pay for gasoline. (See Transcript, Office of Competition, Hearings in Atlanta, Ga. on August 28, 1979, pages 7 - 61.) Not at all surprising, most of the Phillips leasee dealers went out of business while the jobber expanded his direct operations. Similarly testimony was presented that in the state of Maine some jobbers with their advantageous buying price were direct operating stations at near the dealer buying price and were putting many dealers out of business. (See Transcript, Office of Competition, Hearings in Boston, Mass. on September 25, 1979, pages 138 - 143). The same situation exists in various areas around the country, and much of the secret of the jobber's success over the dealer is that the jobber starts with an unfair buying price.

MARKETING SUBSIDIZATION

Thus far it has been shown that the gains made by the major refiners in direct marketing have been largely the result of the shortage conditions that have existed since 1973, the high dealer tankwagon price structure at which dealers purchase gasoline, and volume discrimination in favor of company direct operations. In addition, several of the majors have developed their direct marketing operations by selling below cost. Through subsidizing their direct marketing they have economically evicted branded dealers and have weakened and destroyed private branded dealers.

The large integrated petroleum companies have a long history of subsidizing their downstream refining and in particular their marketing operation from profits generated at the crude oil level of the industry. For decades the large integrated petroleum companies administered the price of crude oil at a level above the market clearing price. With disproportional andunjustifiable profits captured in the crude oil segment of the oil industry, the large refiners were then able to exert tremendous financial pressure on independent refiners and private brand marketers. This also led them to the overbuilding of retail service stations and the creation of an unstable marketing structure that was "hyper" competitive. The downstream subsidization by the major refiners was very harmful to the independent refining sector of the industry and to the private brand marketers which they furnished.

The public statements of the representatives of the large petroleum companies were ones of denial until the mid 1970s; that they had been subsidizing their downstream operations out of crude oil profits. The obvious reason for denying subsidization is that civil and criminal litigations could have been brought against the large petroleum companies by the Justice Department and the Federal Trade Commission plus private action by citizens. Now that the statue of limitations protects these companies against prosecution for their anti-competitive acts going back more than four years, we have a government official speaking out with regard to the past practices of subsidization. Mr. William C. Lane, Jr., Director of the Office of Competition, of the Department of Energy testified under oath that "the conclusion is fairly inescapable that during the 50s and 60s, there was a substantial degree of subsidization of. . . gasoline marketing". (See Transcript, House Subcommittee on Antitrust and Restraint of Trade, Hearings in Washington, D. C. on October 11, 1979, page 23.) While Mr.

Lane would not comment on subsidization since 1971, the public record is also clear for those who care to study it that downstream subsidization continued into the mid-1970s and was prevalent through 1978 and into the first part of 1979. It should also be noted that it was only in the mid-1970s when the major integrated petroleum companies could blame subsidization on marketing regulations that they ever publicly admitted the practice. Yet, it is also clear that the subsidization occurring in the mid-1970s was simply an extension of the long history of sub-sidization about which Mr. Lane testified. What follows are series of statements from periodicals and trade journals which underscore that subsidization was still rampant in 1975.

> In 1975 Gulf earned nothing from the $3.0 billion investment in refining and marketing while earning 18 percent on its $4.5 billion dollar investment in production (*Forbes*, January 15, 1976, and Gulf Financial Statement for 1976).

In 1975 Continental Oil Company earned only 2.5 percent return on its U.S. refining marketing and transportation in comparison to 20.4 percent from petroleum production. In 1976, Continental earned 6.8 percent from its downstream investment and 19.6 percent from production (Continental Oil Company 1976 Annual Report).

After "a turnaround in refining and marketing performance" in 1976, Sun Oil Company earned only a 7.7 percent return from its investment. In contrast, a similar investment in petroleum production earned a 25.2 percent return (Sun Oil Company 1976 Report).

> The refining, supply, and marketing segments of the Phillips business performed better in 1976 than in 1975 when this area was unprofitable (*The Oil Daily*, March 15, 1977, p. 15).
>
> For a year and a half, we (Mobil Oil Company) have been losing money on the over $2 billion of marketing and refining assets we have here in the United States. (Source: Statement of Mobil Oil Company to Senate Committee on Government Operations and Commerce Committee, July 1975).

Exxon had more than $2.25 billion invested in refining and marketing in 1974 on which it had earned a .5 percent return. This is in contrast to a return of 18 percent for overall operations. (Source: *Wall Street Journal*, August 27, 1975 and Joint Senate Hearings July 17, 1974).

From the front page of the *Wall Street Journal* came the following report:

> Gasoline for decades has been something of a 'loss leader' for the oil giants. Their refining and marketing operation — downstream' operations, as they are known in the industry — have often been big money losers.
>
> 'Upstream' Profits
>
> This status was partly by design because the companies made their biggest profits — 'upstream' that is, in the production of crude oil. To keep the profitable crude oil flowing, the companies were eager

> to refine and market large volumes of petroleum products, mainly gasoline, even if it meant selling the products at little or no profit or at a loss.
>
> Top officers of the major companies don't like to talk about this system. But insiders confirm that the companies, in effect, were using refining and marketing as an elaborate disposal system that was subsidized with the profits the companies took at the wellhead. (Source: Peter B. Roche, "Pumping Up Profits", *Wall Street Journal*, March 28, 1977, p. 1.)

As an explanation of the dramatic turnaround in the profits of the major petroleum companies in the second, third and fourth quarter of 1979, several of the large firms explained that their earning gains were in a large part due to substantial improvement in the profitability of marketing which was recovering from the depressed conditions in 1978. Apparently even up until the shortages that began in the second quarter of 1979, the petroleum companies were continuing to subsidize marketing from crude oil earnings, and in some cases from refining profit. (See next chapter for explanation of how refining was subsidizing marketing.)

In justifying their direct operations Sohio and others have testified that the public benefits from lower prices. But one has to look beyond these glib pronouncements of public service to whether the large refiners are subsidizing these lower prices and are temporarily using lower prices to destroy competition from branded and private brand marketers. Gregg Potvin, General Counsel, National Oil Jobbers' Council puts into context the damaging impact that subsidization has on independent competition.

> For more than a quarter of a century, small business petroleum marketers have sought relief from ravages inflicted upon them by integrated refiners. . . the vise of a self granted subsidy, enabling them to sell at retail level at a price which the customers, the national jobbers, dealers, and other marketers, cannot meet.

Mr. Potvin went on to state that small businesses:

> . . . seek no special advantages. They are fearlessly independent and more than willing to meet the rigors of an unfettered and unrigged marketplace. They cannot, however, hope to survive unless they are accorded a fair fight on a free field. Obviously, direct marketing by giant multinational integrated refiners, combined with subsidized direct refinery retailing, is a deathknell for all independent small business marketers.

(See Transcript, Office of Competition, Hearings in Los Angeles, California on July 12, 1979, page 6.)

The 1979 field hearings of the Antitrust SubCommittee on the House Committee on Small Business and hearings of the Office of Competition of the Department of Energy cite endless instances where large refiners were selling at retail through direct company stations at prices near what they charged their dealers. There was no way that they could sell at this low price level and cover the full cost of their direct marketing operations. Mr. Stephen R. Shelton, Executive Director of The Southern California Service Station explained how Gulf got:

> "rid of about 600 branded stations in California and replaced them with a large number of Economy and Go-Lo's which are secondary units. . .".

He explained that Gulf secondary brands became "extremely aggressive price competitors" and using Gulf credit cards were able to "disenfranchise the entire Gulf dealer organization in the State of California". He stated that not only did Gulf sell to their secondary brand direct operations at the lower rack price while maintaining the higher tankwagon price to dealers, but that Gulf furthermore subsidized the expansion of its direct stations. Shelton stated that:

> I know of no retailer that could stay in business for a year losing $20,000, but Gulf was apparently subsidizing many of these units. Just glancing at them, it looks to me like 30 to 40 percent of these stations were subsidized for one or more months and, in some cases they appeared to be subsidized every month that they were in operation.

He went on to show data which indicated that there were several months when the entire Economy division of Gulf operated at a loss. He also indicated that rent and other administrative charges were lower at direct operated stations than the same cost charged to the Gulf branded dealers. Under these conditions Mr. Shelton stated that there was no way that Gulf dealers could survive with this unfair type of head-on competition with the Economy and Go-Lo stations. (See Transcript, Office of Competition, Hearings in Los Angeles, California on July 12, 1979, pages 55-56.)

The Fort Wayne, Indiana Hearings of the Office of Competition held on August 21, 1979 produced many charges of below cost selling by Marathon as it rapidly expanded its direct marketing operation from 1976 through 1978. While Marathon sold gasoline to its branded dealer at the dealer tankwagon price, Mr. G. Norman Nicholson, Vice President of Marketing for Marathon Oil Company stated that they sold to their direct marketing subs at the same price that they charged to other private brand operations. Normally this was 4 cents below the dealer tankwagon price and obviously put Marathon's Speedway and Bonded operation in very favored position in competition with Marathon's dealer stations. Dealer representatives testified that often times the direct operated stations of Marathon were selling near, at, or even below, the dealer tankwagon price and that they had to be subsidizing these units. The following dialogue took place between Chairman Lane and Mr. Nicholson pertaining to the profitability of the Speedway operations.

> Chairman Lane: . . . Have you made a profit on your Speedway operations in Fort Wayne in the years 1976, 1977 and 1978?
>
> Mr. Nicholson: . . . I don't know about 1976, 1977 and 1978; I don't have the figures.

> Chairman Lane: You don't have the figures for 1976.
>
> Mr. Nicholson: I don't know them; we obviously have them but I don't know them.
>
> Chairman Lane: Would you be willing to provide information for the record —
>
> Mr. Nicholson: No, I wouldn't.
>
> Chairman Lane; Are they confidential?
>
> Mr. Nicholson: They are confidential."

Mr. Nicholson then went on to state that the data would be made available on a confidential basis to the Office of Competition as part of their subsidization study. Whether this information will be received by the Office of Competition in a useable form and be made part of the analysis remains shrouded in secrecy. It should be noted that Marathon was one of three companies that refused to submit the information subpoened by the Office of Competition for the subsidization study. (See Transcript, Office of Competition, Hearings in Fort Wayne, Indiana on April 21, 1979, pages 33-82).

Mr. Robert Thornhill, a distributor for Conoco and Texaco testified about the rapid expansion by Marathon and other refiners into direct marketing and the aggressive pricing practices they employed. Thornhill stated the following:

> . . . the method of retailing gasoline in Fort Wayne, Indiana has changed substantially since 1974. Many major brand independent refiners now market gasoline through a sizeable increase in their direct salaried operated outlets. In many cases this was done at the expense of cancelling independent stations, and building new self-service and split-island stations at huge investments.
>
> The facts also show that without a doubt these refiner direct-salaried stations could not pay their way in 1976, 1977 nor 1978. They had to be subsidized with profits from other operations of the various refiners involved. To compound the situation, in many occasions, these same refiners raised their prices to their jobbers and their dealers and during the same week actually lowered their retail price at their direct-salaried outlets.
>
> It would appear at first that this has been a better deal for the buying public. However, many independent operators have already been eliminated in the Fort Wayne area and I believe we can all look in the future and see the final result after the independent businessmen are virtually eliminated from the marketing of gasoline.
>
> As an independent businessman I strongly support the free enterprise system in this country. If my buying price at the refinery gate is the same as my competition without subsidization, and I cannot pay my expenses and make a profit, I do not deserve to be

> in the marketplace. This, however, has not been the case in the period of 1976 through 1978."

Mr. Thornhill, as other independent businessmen, did not ask for any special treatment but instead to be treated fairly and not have to compete with refiner direct operations that are subsidized from profit obtained at earlier levels of the petroleum industry. (See Transcript, Office of Competition, Hearings in Fort Wayne on August 21, 1979, pages 139-157).

The problems of market subsidization confronted by dealers and jobbers was heard throughout the country and a few more examples will highlight the nature of the problem. In Texas and other areas of the mid-west Mobil has been converting many of its one-time dealer operator stations to company direct units marketing under the Sello brand. Mr. John Calhoun, representing the Texas Oil Marketers Association, a group of 800 branded and unbranded distributors of petroleum products, discussed the problems presented by Mobil's direct marketing operations. He indicated that the Association had received many complaints of subsidization regarding Mobil Oil Company's unbranded Sello operations. One of his members wrote to the President of Mobil Oil Company in August 1978 advising him of what he considered to be the unjustifiable low prices at several stations:

> I cannot believe that Mobil management knows that Sello's retail price is below that of branded products to their own dealers.

In a response to this jobber, Mobil Oil Corporation's Vice President W. V. Butler stated:

> These stations are competing with non-major gasoline retailers in this market area. We are posting retail prices which are competitive with the non-major stations that are important.

Mr. Calhoun indicated that it was hard to understand how a company "such as Mobil could justify selling product at retail at any type of outlet at prices less than their dealer tankwagon price".

Mr. Ernest Rohr, President of Empire Oil Company, a jobbership from Raytown, Missouri (a suburb of Kansas City, Missouri) testified that if current trends continue that the structure of competition in the petroleum industry will be materially altered with the large integrated petroleum companies "extending their control from the well-head to the pump nozzle". He stated that there is no question from what he has observed that companies are using their downstream profits to subsidize their takeover of the marketing. Mr. Rohr went on to explain that his supplier, Champlin, had raised the price to his distributorship to the point by mid-1977 that he and his dealers could no longer compete. In nearby marketing areas where Champlin had cancelled their dealers and were direct marketing, their retail price for gasoline was within ½ cent of what they sold to the jobber at wholesale in transport load quantities. He stated that based upon his experience that an extreme efficient operator would need a 4 cent margin to break even and that there was "no question that the direct operations were being subsidized by their refining and/or crude revenues". (See Transcript, Office of Competition, Hearings, in Memphis, Tennessee on October 10, 1972, pages 100-102).

Phillips' dealers also reported that their supplier was engaged in predatory pricing and was subsidizing its direct operated stations. Mr. John Herren of the Ohio Gasoline Dealers Association testified before the Antitrust Subcommittee of the House Small Business Committee that one of his dealers was paying Phillips 91 cents a gallon for gasoline. Fourteen blocks away at a company operated station, Phillips was charging 93 cents a gallon and giving away a free car wash. There was no way that the dealer could compete on service and price with the company direct operation and cover his costs.

This section of the report has reviewed the practice of refiners of "selling below cost" and destroying independent dealers and jobbers as they expand their direct marketing operations. Time and again the dealers and jobbers indicated that they wanted no special treatment, but just to have a fair opportunity to compete. There is no way that independents can compete when refiners subsidize direct marketing from profits earned at earlier levels of the petroleum industry.

BUY-OUTS AND SHUTDOWNS OF DEALERS

The petroleum product shortage starting in early 1979 has reduced, at least for the time being, the problem of economic eviction of dealers resulting from subsidization of direct marketing outlets. While dealers are subject to price and volume discrimination practiced by their suppliers, they are better able during times of shortage to price what product they have to recover their cost and make a profit. In addition, dealers are protected from arbitrary lease cancellations since the passage of Dealer Day In Court legislation in June, 1978. Thus, one might assume that the ability of petroleum companies to further extend their direct marketing would be stopped. These developments may have made it harder, but they have not stopped the plans of refiners to expand direct marketing.

With the petroleum products shortages and the Dealer Day In Court legislation refiners have turned to "buy-outs" as a way of eliminating dealers and expanding direct market operations. When a major petroleum company such as Gulf wants a key location as part of its planned expansion of direct marketing operations, the company offers dealers previously unthought of dollar amounts for giving up their stations. For example, Gulf has recently paid dealers from $30,000 to $35,000 for several locations they wanted for direct operations in Atlanta. Good dealers with many years of experience are eliminated through the "buy-out" process.

The Dealer Day In Court legislation has had the effect in many cases of merely delaying the termination of branded dealers. After a full 3 year contract following passage of the Dealer Day In Court, refiners wanting to close locations are permitted to do so. The petroleum companies have notified many of their dealers that they will close certain stations at the earliest possible time permitted under the act. This information has discouraged dealers from continuing to develop their businesses and encouraged them to seek employment elsewhere. Knowing that there is no future in these stations, some dealers are willing to take a small cash settlement for vacating the station or simply to abandon the station without any payment recognizing that they have no future with the petroleum company. In the manner described refiners are able over time to shift more volume from dealers to direct company operations, and continue with their program of enlarging their direct marketing activities.

PRICE INCREASE TO OPEN DEALERS AND JOBBERS

To gain market share and market coverage, the petroleum companies have sold gasoline to *dealers who own their properties*, as well as through leasee dealers. To compensate these open to buy dealers for the value of the property used in retailing gasoline, refiners have typically paid them an allowance of 1½ to 2½ cents per gallon of gasoline. In some of the large metropolitan markets like Detroit and Los Angeles, these independently owned branded service stations became high volume, price aggressive outlets. As a consequence, while the petroleum companies gained market representation from open to buy dealers they also created a competitive problem for themselves since they were unable to control price at which this gasoline was sold.

With the shortage, and the goal of controlling volume in direct operations, majors are cancelling the traditional discounts given to independent dealers who own their own stations. For example, Mobil has cancelled all discounts given to its open to buy dealers in California and Detroit, Michigan. Other majors including Shell and Texaco have followed suit and have reduced or eliminated station allowances. If dealers who own their own properties are not paid for the capital they have invested in stations, then they will be forced to withdraw from the industry leaving it controlled by a handful of suppliers.

The branded jobber is another independent marketing agent, and where he competes with the major he too is marked for elimination. On the West Coast Texaco relies heavily on jobbers to market its gasoline. For example, in Los Angeles, Texaco markets more than half of its gasoline through four high volume jobbers. Most of this gasoline is sold by jobbers to dealers owning their own service stations. Studies made by Texaco in the early 1970s highlighted the efficiency of this method of marketing and stressed the importance to Texaco of the distributor business. Yet, in spite of the role and efficiency of the Texaco jobber operations, Texaco plans to eliminate several of its high volume jobbers when their contracts expire in May 1981. (See Transcript, Office of Competition, Hearings in Los Angeles, California on July 17, 1979, pages 15 - 19).

Texaco will accomplish two things by eliminating its distributors. The company intends to redirect its distributor volume through direct properties in which Texaco has invested hundreds of millions of dollars. In addition, Texaco will eliminate the price competition within its brand that is originating from stations served by its distributors. To reduce the competitiveness of its distributor operations, prior to the final termination of their services, Texaco unilaterally increased the price to its distributors by 1¢ per gallon on January 17, 1977, decreasing their margin by 30 percent.

Mobil has taken a similar action and has increased the price to its distributors which will impair their ability to compete.

CHAPTER V

ACTIONS AND INACTIONS OF THE DEPARTMENT OF ENERGY CONTRIBUTING TO THE DESTRUCTION OF COMPETITION IN THE GASOLINE INDUSTRY

In 1972 the United States experienced its first domestic petroleum products shortage since the end of World War II in 1945. The United States was just commencing to work its way out of this energy shortage when the Arab Oil Embargo started on October 15, 1973. The petroleum shortage was converted into an energy crisis which was particularly severe during 1974. Since 1973 the United States has been on the ragged edge of having just enough, or being a little short, of the quantity of petroleum needed to meet the level of market demand. With the beginning of this extended period of petroleum shortage an environment was created which could materially alter the structure of competition in the gasoline industry to the public detriment.

Shifts in the historical pattern of gasoline distribution started to appear with the beginning of the petroleum shortage and Congress recognized that legislation during the shortage was necessary to preserve the structure of competition in the gasoline industry or irreparable damage would be done to some of the less powerful, but highly important competitors. To insure that this would not happen Congress passed the Emergency Petroleum Allocation Act of 1973.

> The purpose of this Act is to grant to the President of the United States and direct him to exercise specific temporary authority to deal with the shortages of crude oil, residual fuel oil, and refined petroleum products for dislocation in their natural distribution system. The authority granted under this Act shall be exercised for the purpose of minimizing adverse impact of such shortages or dislocation on the American people and the domestic economy.

The President originally established the Federal Energy Office which later became known as the Federal Energy Administration to carry out the authority delegated to him by Congress. The Department of Energy (D.O.E.) was charged with the:

> Preservation of an economically sound and competitive petroleum industry; including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petro-chemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded independent marketers;
>
> Equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent marketers, and among all users;

Congress speedily passed the Emergency Petroleum Allocation Act recognizing that the petroleum industry was dominated by several large vertically integrated petroleum companies. Without the self-regulatory process of competition at work, these large firms were in a position to pursue a strategy beneficial to themselves, but highly damaging to small businesses that had competed so vigorously in the marketing of gasoline. The unequal economic bargaining position of small businesses relative to the large integrated petroleum company made Congress fearful that as long as shortage conditions existed action could be taken with adverse impact to small business.

We will show in this section that the pricing and allocation regulations established by the Department of Energy failed to protect the structure of competition as provided for by the Emergency Petroleum Allocation Act of 1973. The failure of the Department of Energy (D.O.E.) to carry out its charge of preserving an economically sound and competitive petroleum industry falls into three general areas as outlined below:

(1). Failed to adopt and implement regulations needed to preserve competition in the marketing of gasoline;
(2). Developed regulations favorable to the large integrated petroleum companies which permitted and encouraged them to integrate forward into direct marketing; and
(3). Failed to respond to substantial evidence that its actions and inactions were destroying branded and private brand dealers and in some instances jobbers.

We will discuss seven specific areas in which the actions of the D.O.E. have been harmful to small business competition:

(1). New base period;
(2). Allocation of supply;
(3). Handling of rent increases;
(4). Unequal nonproduct cost banking provisions;
(5). Subsidization of company operations through nonproduct passthrough provisions;
(6). Subsidization through margin limitation on company direct units; and
(7). Failure to equalize the wholesale price of gasoline.

NEW BASE PERIOD

The D.O.E. rolled forward the base period for the allocation program to the last two months of 1977 and the first ten months of 1978. The historic base period of 1972 covered a time before the marketplace distortions caused by the petroleum shortages. Rolling forward to the new base period favored the large integrated petroleum companies that were aggressively expanding their direct marketing operations in 1977 and 1978.

During 1977 and 1978 the direct operated stations of the refiners were generally selling gasoline from 3 to 5 cents per gallon less than the branded dealer. As was discussed in the last chapter, the low prices at the major direct operated stations were often the result of marketing subsidization and below cost selling by refiners. It was also explained that the majors often favored their direct operated stations by selling to them at the rack price which was 4 cents less than the tankwagon price paid by dealers. In other words, the dealers faced both a higher cost of product and majors subsidized markets during this period when the direct operated stations of refiners were building large volume throughputs. Finally, refiners favored their direct operated stations with large product allocations. Facing both price and volume discrimination, many of the customers of branded dealers and private brand marketers were diverted to the major direct company operated stations.

The hearings of the Office of Competition of the Department of Energy and the Antitrust Subcommittee presented a great deal of testimony about the volume that was drained away from independent marketers to company operated stations. For example, The Georgia Association of Petroleum Retailers surveyed more than 700 branded and private brand marketers and found that their volumes from 1973 through 1977 had decreased on average by 26 percent. In addition, many private branders found it difficult to cover their costs and started purchasing gasoline in the wholesale spot market to try to remain competitive. In this environment, the large refiners encouraged the Department Of Energy to roll forward the base period on the ground that much had changed since 1972, and that it was no longer appropriate to maintain the original base period. Yes, much had changed and one of the big developments was that the majors had established large numbers of high volume, direct operated stations through price subsidization and price and volume discrimination. Rolling the base period forward locked in the large volume allocations in refiner-direct operated units which was very advantageous to refiners when the shortage of 1979 hit. At the same time the new base period locked in branded dealers and private brand marketers with low allocations. In addition, those private branders who had turned to the spot market to remain competitive found that the price of this source of supply climbing rapidly above the retail price and they could not afford to purchase it. Thus, the predatory acts by which the majors built the volume at their direct operated stations paid off when the Department of Energy rolled forward the base period to late 1977-1978. Furthermore, as was previously noted in Chapter II, with this volume locked in at the direct company operated stations, the majors rolled forward their prices by 3 to 5 cents a gallon to the level of their branded dealers and no longer acted as aggressive price competitors and sold their large gallonage at a much higher profit margin since they now had no competition.

UNFAIR ALLOCATION OF PRODUCT

The allocation provisions of the Emergency Petroleum Allocation Act required that regulations be prepared that resulted in *fair and equitable distribution of product*, but this has not occurred. As all statistics on petroleum marketing show, there has been a major attrition of branded dealer stations. As a hundred thousand branded stations were closed because of the many questionable practices raised in this report, their volume reverted back to the major refiners. Instead of fairly reallocating that product across all stations, the majors took advantage of the fact that this volume was not tied down to particular stations, and they programmed it through new and existing company operated units. Not only did the majors favor their own direct operated units when additional volume became available, but they also became willing suppliers to their own newly constructed and remodeled stations.

The D.O.E. established a procedure for redistributing gasoline that became available as stations were closed and refiners' supply obligations were reduced. First, refiners were required to fairly redistribute that product to existing stations until they reached a 100 percent allocation fraction. Once this was done refiners were required to declare surpluses to the D.O.E., which were routinely released back to the refiners (This was particularly true with the surplus market conditions during 1977-1978). When this happened refiners were then ordered to follow surplus distribution procedure and to offer on a pro rata basis the excess product to all customers they were obligated to supply (e.g. base period customers plus newly assigned customers). After saturating the demand of their systems, refiners could dispose of product at their discretion. By being aware of the surplus product becoming available later in the month, refiners' direct operating departments were able to plan their activities to move much of the extra volume. Thus, refiners were able to increase sales volumes through their direct operated units in 1977 and 1978 which later became the new base period. This guaranteed the direct operations of refiners' much larger allocations than they had in the original base period.

The D.O.E. also established a procedure for making allocations to new stations. A marketer wanting to open a new station, was required to file Form 17s and later Form 99s to justify the volume of gasoline requested. If one had a "willing supplier" and the forms were properly completed, the D.O.E. would normally approve the volume requested. However, as a matter of routine, refiners generally indicated that they would not be "willing suppliers" to independent marketers. Without assurance of a permanent and desirable supplier, independent marketers (e.g. open to buy branded dealers and private brand marketers) were hesitant to make new investments in locations. This allocation process was particularly unfair to the existing leasee dealer since he could not remodel or rebuild the station and apply for a higher allocation. However, refiners with rapidly expanding direct operations became "willing suppliers" to their own direct operated units. Refiners frequently became "willing suppliers" of these new stations with volumes 3 - 5 times greater than the volumes for neighboring dealers. It was common for new units to receive allocations from 150,000 to 250,000 gallons per month, per unit, while existing dealers were sold generally from 30,000 to 50,000 gallons per month.

RENT INCREASES AND FIXED MARGINS

Initially the Department of Energy would not permit rents to increase and alter the cost structure of dealers from what it had been in the relatively normal base period year of 1972. However, refiners challenged in the court the authority of the Department of Energy to regulate rents, and their position was upheld by a federal court. As a consequence of this ruling, refiners rapidly increased the cost of rent to their dealers and passed through increases of 50 to 100 percent on one year contracts and as much as 300 percent over a three year period. This had the impact of significantly increasing the dealer's cost of doing business and became one of the ways by which refiners were permitted to economically evict dealers from stations. Permitting refiners to change the method of charging rent from the historically 1½ to 2 cents per gallon of gasoline, to the newly coined "economic rent" approach, significantly altered the basis by which a dealer occupied a station which was contrary to the intent expressed in the Emergency Petroleum Allocation Act. Furthermore, the Department of Energy had the authority to appeal the federal courts' ruling which changed "a normal business practice", but they did not appeal.

The federal court's ruling and the Department of Energy's regulations discriminated against the branded and private brand dealers who own their own stations. While the integrated refiners were permitted to charge "economic rents", independent marketers who run and operate their own stations were prohibited from doing the same and from increasing their margin when marketing conditions would permit.

Not only did the Department of Energy permit refiners to increase rents and to alter the normal conduct of business relations between dealers and refiners, but it also refused to permit dealers to increase their allowable margin to recover rent increases which frequently amounted to an additional one - four cents per gallon. What in essence this Department of Energy regulation did was to permit refiners to reach into the back pocket of the leasee dealer and take a portion of his margin.

DENIAL OF OPPORTUNITY TO BANK NONPRODUCT COST

As of March, 1974 dealers were permitted to increase, if justified, their margins up to 3 cents per gallon to recover nonproduct cost increases. During the price war years of 1977 and 1978, dealers were often unable to recover their May, 1973 allowable margins plus the authorized and justified increase in their margins to cover nonproduct cost increases. Nonetheless, dealers were not permitted to bank nonproduct cost increases (to accumulate unrecoverable cost that could be later included as part of the margin). Refiners obtained a court ruling permitting them to bank unrecovered nonproduct costs. However, the D.O.E. persisted in its position denying dealers the same banking privilege which was detrimental to independent marketers. Finally, the Department of Energy did not permit rent increases to be included as a nonproduct cost increase in calculation of allowable margin.

REFINER SUBSIDIZATION OF MARKETING ENCOURAGED BY NONPRODUCT COST PASSTHROUGH REGULATIONS

As just noted the Department of Energy regulations permitted refiners as marketers to recover all authorized nonproduct cost increases including the 3¢ at marketing. However, the Department of Energy permitted marketing costs to be recovered at the refining level and to be incorporated into the wholesale price that refiners charged to their company direct stations as well as in the allowed price charged to branded and private brand marketers. The 3 cent nonproduct increases included cost associated with the majors expansion of their direct marketing operation. What this meant was that the Department of Energy regulations permitted refiners to include in the wholesale price of gasoline to branded and private brand dealers part of the cost of developing the refiners direct market operations.

This ill conceived ruling by the Department of Energy has had two major detrimental impacts on independent marketers. As incredible as it may seem, dealers are subsidizing the expansion of the direct marketing activities of their own refiners. Secondly, marketing is being subsidized by refining to the detriment of the dealers. This means that refiners are taking their marketing costs back to the refining level, and hence are not required to recover full cost at retail to sustain this business activity. On the other hand, major and private brand dealers must have adequate retail margins or else they cannot stay in business.

The Department of Energy regulations permitting refiners to record nonproduct cost at the marketing level and then recover them at the refiner level are somewhat ironical since the Department of Energy has been charged by the President to carry out the Title III Marketing Subsidization Study. At the same time that the Office of Competition of the D.O.E. is conducting the "subsidization study", the Department of Energy regulations, prepared at the request of refiners, contributed to more subsidization of marketing. Recent statements of major petroleum company marketing vice presidents make it clear that they intend to blame the regulations for causing them to subsidize marketing—the same regulations that they encouraged the D.O.E. to make The intention is to direct blame from themselves for subsidizing marketing and to make the regulations the culprit. What we have is the familiar practice of the government being encouraged to adopt a position desired by big business, and then that regulation being used by industry as an excuse for their anticompetitive conduct.

Actually the 3 cent nonproduct cost passthrough regulation encourages refiners integrating into direct marketing to recover nonproduct cost increases at the refining level rather than at the retail level where they are incurred. In this manner, the Department of Energy has handed over to the large refiners, desiring to expand direct marketing, the tool for doing so. Through marketing subsidization refiners are able to drive out dealers, creating the vacuum into which their direct marketing expands. Thus the Department of Energy with malice of intent, or out of pure ignorance, is pursuing a course of action directly contrary to its mandate to protect the structure of competition in the marketing of gasoline. Unfortunately, what we have is a situation where the bureaucrats have joined with the big refiner to create an environment in which small business is being eliminated by the government authorized predatory acts of large integrated petroleum companies. Quite a trap has been laid by the bureaucrats writing the regulations to eliminate the strenuous competition provided by small businesses in the marketing of gasoline to the public. It is incredible and unforgiveable that these government servants, charged with carrying out the mandates of the Congress and looking out for the public's interest, have been co-opted by the interest of the large integrated petroleum companies who now want to monopolize the marketing of gasoline in this country.

The detrimental impact on competition resulting from the combination of improper D.O.E. regulations and the pricing practices of the major refiners was emphasized by an officer of one of the most efficiency private brand marketers. Mr. Raymond Gaffney, Vice President, Highway Oil Company stated that the apathy of the D.O.E. and the pricing practices of the major oil companies were combining to eliminate independents from competition. He stated "We're about to go out of business." Indicative of the frustration of many independent marketers Highway sent 1,000 telegrams to government officials and ran ads stating "Will you help independent gasoline marketers? Department of Energy regulations are about to ruin us all." (Source — *Capitol Journal*, Topeka, Kansas, August 18, 1979.)

PRICE REGULATIONS CONTRIBUTING TO REFINERS SUBSIDIZING MARKETING

As bad as the Department of Energy regulations are that permit nonproduct marketing cost to be passed through to the refining level, the government has also developed pricing regulations which further contribute to the refiners, subsidizing their marketing activities. The Department of Energy finally gave pricing relief to independent dealers by authorizing an increase in their margins to allow for a 15.4¢ per gallon margin effective July 1979. While taking action to give badly needed relief to branded and private brand marketers suffering from the earlier ill-conceived regulations, the Department of Energy committed another grievous mistake. While initially doing some good with the new margin regulations, they offset this by the second part of their pricing regulations. The mistake was that they held refiner direct marketing operations to their May 1973 margin plus the 3¢ nonproduct cost passthrough. What this ruling did was to hold refiners' direct marketing prices at a level of from 6 to 8 cents below the maximum ceiling price of dealers. Thus, when the D.O.E. passed new margin regulations which could have reduced the majors' subsidization of marketing, their action instead forced refiners to continue the practice of marketing subsidization.

D.O.E. officials now indicate one reason for not allowing refiners with direct operations to have increased margins is that refiners had been given a great deal of additional profit with the beginning of phased decontrol of oil and the immediate decontrol of certain classifications of oil. The crude oil decontrol program was one that the integrated petroleum companies had worked long and hard to accomplish. As it turns out the fears of D.O.E. officials were *correct, for* as the crude oil decontrol process began in the third quarter of 1979 the petroleum company profits soared. With boldness most petroleum companies attributed their large profit gains to improvement in the European market and not to crude oil decontrol. At this time Congress was debating the level of the "windfall" profit tax on crude oil.

The large integrated refiners are now put into a position by government regulation where it is impossible for them to lose. With phased crude oil decontrol they are obtaining an enormous increase in cash flow and in profitability. At the same time, with their prices frozen from 6 to 8 cents below the dealer level, they are bound to siphon off more gallons from branded and private brand dealers. If we move into the long predicted recession, if Gasohol product grows, and the public continues to conserve on gasoline, then supply and demand will move back in balance and conditions will be established for finishing off more branded and private brand dealers who simply are unable to compete on a price basis because of the position the Department of Energy has put them into. The Department of Energy is compounding its mistakes with the final outcome very likely being the destruction of most of the small businesses in the marketing of gasoline.

WHOLESALE EQUALIZATION

A section of the EPAA requires not only fair allocation of petroleum product, but also the equitable pricing of the product. The crude oil entitlements program was prepared to keep the price of crude oil to refiners competitive. A "three-tier" crude oil market had developed which was creating major differences in the crude oil cost of refiners. There was low cost "old crude oil," "higher cost stripper and new production" and finally, the still higher "imported oil". The crude oil entitlement *program was* developed to eliminate major differences in the costs of crude oil so that refiners would have reasonably competitive refined product prices.

During the last few years "spot sales" of crude oil at higher than the contracted import price were becoming a growing proportion of the crude oil imports. The entitlement program was not adjusted to account for this fourth-tier and highest priced crude oil. As a consequence those refiners with a disproportionately large share of imported, spot crude oil, were selling product that was increasingly more expensive than their competition. Their dealers in turn were put into a position of paying premiums of 4, 6, 8, or even 10 cents a gallon for the gasoline that they purchased. Many of these dealers have been ruined and have gone out of business as a consequence of the Department of Energy failing to make some sort of reasonable adjustment to maintain equitable prices among refiners and their dealers.

The Office of Hearings and Appeals has recently handed down two courageous decisions in the cases of Ashland and Union. At the strong objection of the crude rich refiners, Mr. Melvin Goldstein, Director of the Office of Hearings and Appeals of the D.O.E. ruled that Ashland and Union were to be sold some of the lower cost crude of crude rich refiners. This action allowed Ashland and Union to continue to operate at reasonable levels of capacity, and to bring their cost more in line with the wholesale prices of their competitors permitting their dealers to continue to operate.

The Office of Hearings and Appeals has granted temporary relief, but what now is needed is for the D.O.E. to adjust the crude oil entitlement program so that dealers are permitted to purchase gasoline at reasonable competitive prices. If the D.O.E. for some reason chooses not to make further adjustments in the crude oil entitlement program, much the same effect can be created by developing a "refiner—marketer entitlement program" which would operate similarly to the crude oil entitlement program. Those refiners having lower crude oil cost and lower wholesale prices would be required to purchase wholesale entitlements from refiners having higher crude oil cost and noncompetitive product prices. Regardless of the process employed, the D.O.E. must develop regulations that will sharply reduce the great disparity of the wholesale level with dealers having to pay high and noncompetitive prices for the gasoline they sell.

CHAPTER VI

SUMMARY OF FACTORS EXPLAINING THE IMPENDING DESTRUCTION OF SMALL BUSINESS IN THE GASOLINE INDUSTRY.

1. Gasoline marketing is the last stage in the integrated petroleum industry.
2. Earlier stages of integrated petroleum industry include crude oil, pipelines and refineries. These sectors of the petroleum industry are dominated by the twenty largest integrated firms.
3. The final stage of gasoline marketing has historically been performed by hundreds of thousands of independent marketers providing a variety of services and prices associated with the marketing of gasoline.
4. The major integrated petroleum companies treated marketing as a means of converting their highly profitable crude oil into cash and greatly overbuilt marketing facilities in the 1950s and 1960s.
5. Approximately 85 percent of all gasoline carries a refiner's brand.
6. Historically refiners have relied upon independent branded dealers to sell most of the gasoline.
7. There are two types of branded dealers: the leasee dealer and the open dealer.
8. The largest method of branded marketing has been through *leasee dealers* where the refiner is both the supplier and landlord to dealers.
9. The *open to buy* branded dealer owns or controls the service station facilities which he operates.
10. Approximately 15 percent of the gasoline is sold by private brand marketers that control their own brand.
11. Historically the major brand gasoline has been sold on a full service, convenience basis, with credit cards and with the support of extensive advertising.
12. Private brand approach has been the major alternative to the major branded method of marketing and has been based upon relative few, high-volume, limited service, low price stations.
13. Major brand jobbers have often acted as supplying agents to dealers in smaller markets, as well as in some of the major metropolitan markets.
14. The United States experienced a domestic energy shortage during 1973 which became an energy crisis in 1974 as a result of the Arab Oil Embargo.
15. The petroleum products shortages destroyed the normal workings of supply and demand in the marketplace.
16. The petroleum products shortages gave refiners additional power over the independent marketers since they had no viable alternate sources of supply.
17. Since the beginning of the petroleum products shortages in 1973 there has been a major attrition of branded and private brand dealers as well as some jobbers of petroleum products. More than 100,000 dealers have gone out of business.
18. Over the years the rights of branded dealers have been usurped by their landlord-suppliers through the power of the short term lease.

19. Refiners have regularly infringed upon the rights of their independent dealers regarding hours of operation, acceptance of company promotions, sales of company's TBA, and the pricing of petroleum products and selling of only the refiners' products.
20. The major refiners used the short term lease to not only closely control the activities of their dealers, but to also terminate leases and take over the locations for company operated stations.
21. Tens of thousands of dealers were cancelled or the leases not renewed who had served their suppliers well for many years.
22. Congress enacted the Petroleum Marketing Practices Act in June 1978 to deal with the one-sided relationship existing between the supplier and the leasee-dealer.
23. The Act was intended to curtail the capricious and arbitrary termination of dealers and to reduce refiners' control over the actions of independent businessmen.
24. Congress acknowledged that the Petroleum Marketing Practices Act dealt with only one of two major classes of problems that were destroying branded as well as private brand marketers.
25. Refiners were also found to be destroying independent marketers through a set of techniques resulting in "economic eviction".
26. Techniques of "economic eviction" used by refiners to eliminate dealers include rent increase, supply and price discrimination and below cost selling of major direct operations.
27. With the passage of "Dealer Day In Court" legislation in June 1978, the principal method of eliminating dealers and replacing them with company operations has been "economic eviction".
28. Economic warfare has also severely injured "open to buy" branded dealers and private brand marketers.
29. The last year of relative normal market conditions before the petroleum shortage was 1972.
30. From 1972 to 1979 the market share of direct outlets increased from 12.67 percent to 25.78 percent of the gasoline supplied by refiners.
31. Several of the large integrated petroleum companies have wiped out large segments of the dealer operations since 1973 as they have integrated forward into direct marketing.
32. Leaders in abuse of the power of being a supplier in a period of shortage include Gulf, Sohio-B.P., Marathon, ARCO, Citgo, Hess, Mobil and Crown.
33. Sohio provides an example of how rapidly a major marketer in an area can convert to direct marketing operations after it has destroyed its dealer system.
34. From 1972 to 1979 Sohio's direct marketing share increased from approximately 25 percent to approximately 75 percent of its total in the state of Ohio.
35. Five of the larger refiners including Exxon, Amoco, Texaco, Shell and Chevron have not as a group expanded their direct marketing operations.
36. These large refiners had another goal which was for the time being more important than expansion of direct marketing. They wanted most of all

for the President and Congress to decontrol crude oil and pass a windfall profits tax which would be as favorable as possible to the oil companies.

37. Some of the larger refiners are waiting to see what Congress' response will be to the rapid expansion of direct marketing operations by several other refiners.
38. The five large refiners who have yet not expanded their direct marketing have studied, or have considerable experience in running, direct marketing operations.
39. Exxon has a direct marketing operation which is responsible for 16 percent of its gasoline sales.
40. At the right time these large refiners who have been on the side-line could rapidly expand their direct marketing operations.
41. Those refiners who have moved rapidly into direct marketing since 1972 have used a variety of unfair and illegal acts to destroy their dealers and to make way for their direct company operations.
42. Dealers have been forced to compete primarily on a service basis as a result of the structuring of the dealer tankwagon system.
43. The dealer tankwagon system has deliberately made occupancy cost into high variable cost making it extremely difficult for dealers to compete on a high-volume, low-price basis.
44. In addition to holding the branded dealer to the high tankwagon price, the major refiners have discriminated on a volume basis in favor of their direct company operated units.
45. Ruinous rent increases were also used by refiners to destroy their dealers and to make way for direct company operated stations.
46. Some refiners have cancelled the historic discounts to "open to buy" dealers that own their own real estate making it unattractive for independent investors to own and operate branded stations.
47. Finally, refiners with direct operations have engaged in below cost selling and marketing subsidization and have destroyed both branded and private brand marketers.
48. Refiners have used branded jobbers as their wholesale marketing agent in some marketing areas.
49. Some jobbers have unfairly used their wholesale margins to extend their direct branded marketing operation at the expense of branded dealers.
50. Where branded jobbers have expanded their direct marketing they have started with a 4 cent buying advantage and have used this additional margin to destroy dealers of the same and different brands.
51. Since the passage of the Petroleum Marketing Practices Act refiners have used buy-out and statements of planned closing of stations as a means of continuing to cancel leases and eliminate dealers.
52. With the beginning of the petroleum products shortages, Congress passed in 1973 the Emergency Petroleum Allocation Act.
53. Congress recognized that with the shortage refiners could take advantage of their dominant position to destroy small business competition in gasoline marketing.

54. A central provision of this Act was that the Executive Branch of Federal Government was to create an agency that would prepare regulations "to preserve the competitive viability of the independent refiners, small refiners, non-branded independent marketers and branded independent marketers".

55. Another important provision of the Act was to insure equitable distribution of refined products at equitable prices.

56. The Emergency Petroleum Allocation Act was an excellent law, but it has not been properly implemented and enforced by the D.O.E.

57. The D.O.E. has failed in many respects as outlined below to carry out its mandate to preserve the structure of competition and to protect small businessmen:

(a) A new base period was established at the request of refiners which greatly favor their direct operated units and hurt branded and private brand independent marketers.

(b) Regulations were not written that provided for equitable distribution of supply to all marketers, and refiners favored their direct operated stations at the expense of branded dealers.

(c) The regulations encouraged refiners to directly operate old stations, and to contruct new units, which were favored with large allocations.

(d) The regulations permitted refiners to change the normal business practice with their dealers and to pass on to dealers ruinous rent increases.

(e) The regulations permitted refiners to bank both product and nonproduct cost increases, while retailers were permitted only to bank product cost increases but not nonproduct cost increases.

(f) The regulations encouraged the subsidization of marketing from refining profits, and the forward integration of refiners into direct marketing operations.

(g) The new margin regulation required that refiners continue to subsidize their direct marketing operations.

(h) The regulations have failed as required to bring about equitable wholesale pricing of gasoline. As a consequence, many dealers can only buy high priced gasoline which has destroyed and continues to destroy their ability to compete.

58. Many of the D.O.E. regulations have helped the large petroleum companies to take advantage of their position as supplier during times of shortage and to integrate forward into direct marketing.

59. The actions of the integrated petroleum companies, and regulations which were frequently written at their request, are unfairly destroying small business and the viability of competition in gasoline marketing.

CHAPTER VII

PRAYER THAT CONGRESS IS INTERESTED IN PRESERVING A COMPETITIVE GASOLINE INDUSTRY AND WILL PROVIDE LEGISLATIVE RELIEF

We hope that the reader of this report will have a better understanding of the complex nature of the petroleum industry, and that the reader will place marketing into its appropriate context within the vertically integrated petroleum industry which is composed of several multi-billion dollar integrated firms as well as tens of thousands of small businesses. It is the final stage of the petroleum industry—the marketing level—where small businesses have played the key role and the marketing function is not dominated by the multi-billion dollar firms. Sadly, several of the large integrated petroleum companies are proceeding on a course of action, which if allowed to continue, will result in the destruction of hundreds of thousands of small businessmen as the large firms complete their integration from production of crude oil through the marketing of gasoline to the public.

The reader will hopefully realize upon completion of this report that branded marketers, private brand marketers and jobbers are highly efficient businessmen in providing a variety of services, products and prices as desired by the marketplace. It should be understood that it has only been since the petroleum products shortages beginning in 1972 that the large integrated companies have committed themselves to a course of action designed to eliminate small business. They are able to integrate forward at this time and destroy small business since the petroleum products shortages and government regulations have destroyed the normal workings of supply and demand and have placed many of the large refiners into a monopolistic position relative to their marketing customers. Taking advantage of their power as suppliers, many of the large refiners have practiced price discrimination, supply discrimination and have sold below cost in marketing, all of which have had the effect of destroying independent marketers and doing irreparable harm to competition. The large companies have been aided and abetted in the process of unfairly destroying small business by numerous failures of the Department of Energy to write and implement regulations needed to preserve competition as mandated by Congress.

We pray that the Public and the Congress will be incensed by what they read which we present to be the truth to the best of our knowledge. Congress should understand that its mandate to the executive branch of government written into law with passage of the Emergency Petroleum Allocation Act of 1973 has not been carried out. What Congress wisely described as actions needed to preserve competition during the period of petroleum products shortage has not occurred and the viability of the competition of the petroleum industry has been severely and irreparably harmed. Finally we pray that Congress will enact new legislation that will reverse the unfair and illegitimate gains of the large integrated companies, and will stop them forever from integrating forward into marketing, and from interfering in any manner in the process by which gasoline is marketed.

CHAPTER VIII

RECOMMENDATIONS FOR PERMANENTLY SOLVING THE PROBLEMS OF SMALL BUSINESS AND ENSURING A TRULY COMPETITIVE INDUSTRY

Congress is at a critical juncture regarding the structure of competition in the petroleum industry. We are either going to have a highly competitive gasoline industry or else one dominated by a few large integrated petroleum companies. If Congress desires to preserve for future generations a highly competitive gasoline industry, then it must act quickly for the structure of competition in this industry is on the brink of ruin. To do nothing at this time, or to enact inadequate legislation, will probably result in passing beyond the point of no return for preserving a viably competitive gasoline industry. The remedies to be suggested are not unduly harsh, nor will they have a detrimental public impact as some in the industry will allege. But, the proposed remedies are basic if Congress wants to ensure that the gasoline industry will remain highly competitive and capable of responding with the variety of product, service and price demanded in the marketplace.

RECOMMENDATION I.

INTEGRATED PETROLEUM COMPANIES WHO PRODUCE CRUDE OIL AND OPERATE REFINERIES WOULD HENCEFORTH BE PROHIBITED FROM BEING INVOLVED IN ANY MANNER IN THE MARKETING OF GASOLINE AND OTHER MOTOR FUELS THROUGH RETAIL GASOLINE OUTLETS. THE INTEGRATED REFINERS WOULD BE PERMITTED TO ONLY MAKE FINAL SALES OF GASOLINE AT MARKET BASED TERMINALS.

REASONING

Refiners processing less than 15,000 barrels per day or producing less than 10% of their average daily refinery input would not be affected by the legislation. The refineries processing less than 15,000 barrels a day are themselves small businesses and they are experiencing severe difficulty in competing with the large integrated petroleum companies. These refiners tend to be less efficient since they are small scale operations, and they normally produce a relatively lower percentage of gasoline and concentrate on manufacturing heavier petroleum products. In addition, small refiners are struggling to develop the capital required to modernize their plants and to meet environmental standards. The other class of refiners exempted are those that produce less than 10 percent of the oil they process, and who are not the beneficiaries of the tremendous profits that integrated refiners will earn from crude oil decontrol. True independent refiners, those with no crude oil, are entering a very uncertain period. With the beginning of phased crude oil decontrol, and with the unstable international crude oil situation, the outlook for independent refiners is quite uncertain. Thus, it is the larger refiners with substantial production, and who are receiving enormous benefits from crude oil decontrol, who are primarily responsible for the anti-competitive practices described throughout this report, that would be required to divest themselves of marketing.

The type of structural reform advocated has also been recommended as an appropriate way of improving competition in the gasoline industry by the Justice Department, Federal Trade Commission, the Department of Commerce as well as the Senate Judiciary Committee. These agencies have argued that if a meaningful resolution of the problems existing in the gasoline industry is to come about, it will not be done through regulations, but instead be achieved through structural reform of the industry. The history of the judicial branch of government's effort to regulate the petroleum industry has, by their own admissions, been highly unsatisfactory. We only have to consider the recent failure of the Department of Energy to regulate the industry to protect competition to appreciate that regulatory remedies are not possible, and that divestiture of marketing is required.

The divestiture act would require that refiners, covered by the Act, sell their stations to the dealers of record as of a given time. The price would be determined by independent appraisers who would establish and justify the fair market value of the location. The dealer of record would be granted first right of refusal to purchase the station. The Small Business Administration would guarantee up to 90 percent of the loan made to dealers purchasing their stations. Only those stations which have economic viability would be financed and sold to dealers, and those that have no future as a gasoline outlet would be closed and sold.

An alternative to the Small Business Administration loan guarantee approach to dealers purchasing their stations would be to require the petroleum companies to establish an independent real estate arm that would finance and sell the properties to their dealers. The reason for this recommendation is that the integrated companies have, as a result of subsidization and other anti-competitive practices, built and financed over the years their gasoline station systems, and have engaged in practices that interfered with the normal workings of competition at the marketing end of the business. Since they already have under a special set of unfair circumstances financed their station programs, the petroleum companies could be required to finance the purchase of stations by their dealers. Refiners could earn a fair rate of return (e.g. 12 percent) while the dealer is paying off the station. Furthermore, given the enormous profits earned from crude oil decontrol, this plan imposes little burden on the petroleum companies.

For a variety of reasons such as age, health, desire for ownership, potential of present location, some dealers may not choose to purchase the station they operate. In this case the stations could be sold at their fair market value to independent real estate investors. These investors might purchase one, a few, or several hundred stations and would in turn lease the stations to the dealers at an economic rent. Under no circumstances would they be permitted to run the station directly, or through some subterfuge. If the dealer doesn't want to purchase the station, and if the investor is unable to receive a fair return on his investment, the stations could be sold for other purposes. It is, however, recognized that the intent of this law is to fairly price the facilities that are already constructed to market gasoline, so that either a dealer, or an independent investor, can purchase them for the continued sale of petroleum product.

RECOMMENDATION II

THOSE REFINERS REQUIRED TO DIVEST MARKETING WOULD SELL TO ALL PURCHASERS OF GASOLINE AT THE RACK, IN TRACTOR-TRAILER LOAD QUANTITY, AT THE SAME PRICE.

REASONING:

Testimony given by jobbers and dealers in endless hearings has been that all they are asking for is "fair and equitable" treatment and the right to buy at competitive prices. They conclude their statements by stressing they are not asking for any special privileges. In a competitive buying situation this is exactly what should occur. Greg Potvin, General Counsel of the National Oil Jobber's Council recently testified as follows: (See Transcript, Office of Competition, Hearings in Los Angeles on July 17, 1979, page 9)

> Jobbers seek no special advantages, they are fearlessly independent and more than willing to meet the rigors of an unfettered and unrigged marketplace. They can not, however, hope to survive unless they are accorded a fair fight or a free field."

Similarly, Jack W. Houston, Executive Director of the Georgia Association of Petroleum Retailers testified at the same series of hearings that "all we (dealers) want and demand can be summed up in just two words—fair treatment". Also at those hearings Mr. Tom Patton, past President of the National Oil Jobbers Council, and a large gasoline marketer himself, testified as follows: (See Transcript, Office of Competition, Hearings in Atlanta, Georgia on August 28, 1979, page 11)

> If you take a reasonable view of the petroleum marketer and read what he has been saying for years, you can arrive at no conclusion other than that he seeks nothing more than a fair share of supply at a price which permits his competing from the same start, from the same competitive start. I have fought legislative battles, and I can recall no cases where he has sought some favored or some protected role. He seeks nothing except a fair shot.

Mr. Patton went on to elaborate on his views that all marketers should start at the same gate and at the same price. He went on to testify in response to a question as follows: (See Transcript, Office of Competition, Hearings in Atlanta, Georgia on August 28, 1979, page 25 and 26)

> Mr. Delaney: . . . Tom, you mentioned that several times you are interested in starting out at the gate at the same point as everyone else. I was wondering how you feel about the concept of instituting a rack pricing system where everybody apparently could go to the gate, even a dealer or broker, anybody, and pick up the product.

> Mr. Patton: It has never been of any personal concern to me; and I've argued that point a hundred times, I guess; and many guys just get frightened to death of the idea, because they see that they are now a jobber. They buy at a given price so here comes my customer over here—let's call him a dealer for the moment. Then under that scheme he comes in to buy at the same price. Well, I say hogwash. My reason for that is this: Everything has a cost. There is no free lunch. Now if a dealer provides every function that a jobber performs then he is worthy to have the jobber's price. . .

The testimony of several leaders of the gasoline industry is quite significant and should be further considered. Mr. Potvin, Chief Counsel of the N.O.J.C. and Mr. Patton, past President of the N.O.J.C. both underscored, and reiterated, that they don't want any special advantage, but simply ask for fair and equitable treatment for all. Mr. Houston, Acting Executive Director of the Service Station Dealers of America, testified to the same goal. Obviously, there are those jobbers who want to maintain their special buying price and use it to compete at the retail level with dealers who are at a disadvantage. Congress should not be concerned about those jobbers who will argue for an ***unfair start*** "at the gate" (Tom Patton's words). We can either have fair and equitable competition in gasoline marketing, or we can continue to have those with special privileges, like the integrated petroleum companies who subsidize their marketing from crude oil, or some jobbers who use their special buying price to destroy branded and private brand marketers. Clearly, there are some jobbers who now have a preferential buying price, and that will join with the large integrated petroleum companies to fight any type of reform that will establish fair and equitable conditions of competition in the gasoline industry. Both refiners and some jobbers want to use their special buying price to destroy dealers, and to explain their demise by claiming they were inefficient.

What Mr. Potvin, and Mr. Houston all argue is that no one should start with an unfair advantage, and that is what would be expected in a truly competitive industry. The artificial distinction in buying price between jobbers and dealers does not exist in other industries. So why should this practice be continued which is so contrary to fair and equitable competition? Consider for a moment the pricing of products in other industries. No matter who the buyer is, if he purchases a trailer load, or a boxcar load, of the same product from P & G he pays the same price as the competition purchasing in the same quantity. The trailer and the boxcar is the maximum quantity of product for which there are cost justifiable differences in serving customers. The same is true in most other industry, as for example, in the appliance field. Competitors in a given market are normally charged exactly the same price for purchases made in tractor-trailer load and in railroad car lots. So why should there be any difference in the petroleum industry when a dealer, or a jobber, both buy from the same loading rack and purchase the maximum quantity of approximately 8500 gallons which is a tractor-trailer load of gasoline? This is the largest quantity at which marketers typically purchase gasoline from the loading rack. Practically all stations today, except the small rural marketer, are capable of purchasing a full tractor-trailer load of gasoline.

Dealers and jobbers are not the only ones to have noted the inequity of the dealer tankwagon pricing system (i.e. D.T.W.) A major refiner also recognized the problem created by the dealer tankwagon system, and in a major document expressed an opinion in favor of rack pricing. The "*SUMMARY*" of Texaco's "Long Range Plan: 1977 - 1981" explains:

> The growing trend whereby gasoline retailers are at a competitive disadvantage in the marketplace with respect to Independents and Branded wholesalers has threatened the Industry with possible legislation to establish a single rack or functional price to all customers.
>
> Furthermore, sales trends of the traditional retailer are declining and wholesalers are entering the retailing function utilizing their margins effectively.
>
> The Industry, including major oil companies recognizing the problem, is seriously discussing the same price to all customers, or of a rack pricing concept.
>
> *We recommend that Texaco* oppose rack or functional price laws, but *consider the concept of rack pricing.* (emphasis added)

If for some reason the jobbers argue and convince Congress that they deserve a special buying price, then we have no choice but to ensure that the jobber uses that special buying price for its intended purpose. Thus, we have the following recommendation which would only be implemented if our rack pricing provision is not adopted along with divestiture.

CONTINGENT RECOMMENDATION II

JOBBERS AND OTHER DISTRIBUTORS OF REFINERS WHO ARE REQUIRED TO DIVEST MARKETING, WOULD THEMSELVES, BE DIVORCED FROM THE DIRECT MARKETING OF GASOLINE.

REASONING:

Since there is abundant evidence of the widespread practice of some jobbers using their special buying price to unfairly compete in direct marketing, this would no longer be permitted to happen. If jobbers of the large firms divesting marketing were permitted to continue to direct operate, having benefit of a special buying price, they would simply replace the refiner as large scale direct marketing operations. With the rack pricing provision, this would not happen and jobbers would not be competing with any special advantage.

RECOMMENDATION III

CONGRESS SHOULD DIRECT THE DEPARTMENT OF ENERGY TO MAKE THE NECESSARY ADJUSTMENTS IN THE CRUDE OIL ENTITLEMENT PROGRAM TO ENSURE EQUITABLE PRICES OF GASOLINE TO DEALERS OF DIFFERENT BRANDS.

REASONING:

Prior to the shortages developing in 1973, the wholesale prices of refiners to branded leasee dealers (e.g. the dealer tankwagon price) were within a fraction of a cent of one another. If a refiner's price was not competitive he quickly lost badly needed sales volume. With the beginning of the petroleum product shortages, disparities started developing in the wholesale price of gasoline. Congress recognized that the different crude oil cost of refiners would put some suppliers and their dealers at decided price disadvantages, and they urged the Department of Energy to develop the "crude oil entitlements program". This program brought crude oil costs and refined product prices of suppliers back into line with one another, and permitted refiners and marketers to remain competitive. This program worked well until a sizeable proportion of imported crude oil was trading in the high price world spot market. When this happened large disparities developed in the cost of a refiner's crude oil and in their wholesale products prices. The differences in the wholesale price for gasoline rose to 5 or 10 cents or more a gallon in many cases. Such price differences are seriously injuring the ability of high crude oil cost refiners and their customers from competing and remaining viable.

Congress should instruct the D.O.E. once again to refine the entitlements regulations to bring the wholesale prices of gasoline into reasonable balance. If this is done then refiners and dealers can once again compete on the basis of efficiencies and services, and not on the source of the supply of crude oil which they happen to purchase.

The President's New Energy Plan reduces the level of crude oil imports coming into the United States on an annual basis over the next several years. Refiners are no longer going to be permitted to import whatever quantity of crude oil that they desire. The government must develop an allocation system so that the maximum level of crude oil imports will not be exceeded. As this program takes effect, regulations should be developed to equalize the cost of imported oil among refiners. Thus, as part of this Presidential program to limit crude oil imports, the entitlement program could be adjusted to more nearly equalize the crude oil cost of refiners.

If for some reason Congress, or the D.O.E., decides it is inappropriate to "fine-tune" the crude oil entitlement program to take into account the increasing volume of imported crude oil being sold at premium prices in the spot market, then they should give serious consideration to a refiner-marketer entitlement program. Refiners with low wholesale prices would be required to purchase product entitlements from those refiners with high priced product. The administrative apparatus needed to put the program into motion is relatively simple. (See talk by Allvine and Phillips to Georgia Oilmen's Association, May 31, 1979 for more detail on how this program would operate.)

RECOMMENDATION IV

MARKETING CONTROLS WOULD BE PHASED OUT AS THE ABOVE RECOMMENDATION ON DIVESTITURE, RACK PRICING (OR DIVORCEMENT OF JOBBERS) AND WHOLESALE PRICE EQUALIZATION ARE IMPLEMENTED.

REASONING:

Over time the regulations are creating more and more distortions since market factors cannot be readily realigned by normal economic signals. The longer regulations continue, the more regulations that have to be written to "patch-up" the system to correct shortcomings of prior rulings. Very simply, regulations beget more regulations until there is such a complicated morass of regulations that they add greatly to the cost of marketing gasoline.

In an unregulated marketing environment when the competitive process is working, unusual profit situations are rapidly destroyed as entrepreneurs move capital resources to meet more profitable opportunities. Under the regulated marketing environment this is not happening. There are some resellers who are capitalizing on circumstances and regulations and are making enormous and unwarranted profits. For example, since the development of marketing regulations, a large number of gasoline brokers have come into existence. In the past the quantities of gasoline being brokered was small and brokers operated for ¼ to ½ a cent per gallon for bringing large scale buyers and sellers together. Today such transactions often yield brokers from 5 to as much as 10 cents per gallon. Without any substantial investment, and primarily through paperwork, brokers are earning enormous sums without providing services commensurate with their fees. In addition, there are instances where marketers have simply closed their stations and have sold the product allocated to them into the spot market. Under normal conditions the marketer might have earned a cent or two per gallon of gasoline with substantial investment in his station operation. Under shortage conditions and controls that same operator may be earning 10 or more cents per gallon of gasoline without any station investment. This taking advantage of the shortage and the regulations is costing a great deal which is being paid for by the consumer.

Clearly controls have existed too long, but to remove them without adequate protection as provided for in the recommendations of this report could lead to the total destruction of competition in the gasoline industry. Several large integrated petroleum companies, set on a course of eliminating their dealers and going into direct marketing, would be in a position to accelerate this effort. Thus, while there is a growing anxiety about regulations, we should not be stampeded into doing so until adequate safeguards are made to preserve competition in the marketing of gasoline. It is our belief that with the implementation of the recommendations of this report that marketing can be deregulated.

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JACK W. HOUSTON

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OTIS D. PHILLIPS

is President, Phillips Energy Service, Inc., Norcross, Georgia; a firm providing regulatory consulting services for petroleum marketers. Mr. Phillips formerly served as Regional Director of Fuels Regulations for D.O.E. in Atlanta and as Deputy Director of the Presidential Task Force for Reform of F.E.A. Regulations during 1976 in Washington.

Attachment No. 2
Ref. page 3

20

Questions
&
Answers

H.R. 1362 & S. 326

Small Business Motor Fuel Marketer Preservation Act of 1981

97th Congress, 1st Session

Service Station Dealers of America

SSDA

TWENTY QUESTIONS & ANSWERS ON THE

Go For Fairness

"SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT OF 1981."

H.R. 1362 & S.326

1. Q. WHAT ARE THE KEY ELEMENTS OF THE SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT OF 1981?

A. a. **Dealers' Rights; SBA Loan Guarantee***

The proprietor of any leased service station that is offered for sale by a refiner shall have the right of first refusal to purchase the station. SBA loan guarantees are made available for such purchase.

b. **Divorcement; Refiner Sales Rule***

The major integrated refiners will be prohibited from directly operating any retail gasoline outlets. (They will be permitted to continue ownership and to operate them through lessee dealers.) Small or independent refiners would be subject to a refiner retail sales limitation rule for sales made through their own direct-operated retail outlets.

c. **Anti-competitive Pricing Prohibition**

All suppliers, refiners and jobber distributors will be required to establish daily a "Wholesale Transfer Price" and will be prohibited from charging a different price to different customers if they are purchasing similar quantities of product at the same time and from the same place, excepting actual cost differences to purchasers who will and will not sell under a trademark or brand name. Those suppliers who may continue direct operation of motor fuel service stations will be required to transfer product to their own outlets at the established wholesale transfer price and to charge a retail price that covers the cost of operating the retail outlets so that such suppliers earn the same as they would have earned if the product had been sold at wholesale.

d. **Open Supply**

It would be unlawful for anyone to interfere with the right of a dealer to purchase, store or sell motor fuel products obtained from anyone else if it is not available from the regular supplier upon terms and conditions reasonably comparable to those

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*S.326, *as introduced,* does not contain Dealers' Rights, SBA Loan Guarantee or the Refiner Sales Rule.

available to the dealer from any other such persons. Agreements providing that a dealer shall buy product only from a particular supplier would be permitted only if they specify the dealer's right to purchase product elsewhere. Dealers operating branded stations would be required to provide point-of-sale notice to customers if product being sold was not obtained from the brand-name supplier.

e. **Information Required**

Refiners would provide certain industry information to FTC if not otherwise available from other agencies of government.

f. **Penalties; Enforcement**

Violations would be punishable by prescribed fines.

2. Q. **WHY IS SUCH LEGISLATION NECESSARY?**

A. **To Preserve Competition!** The destruction of small business and competition is in an advancing stage. Unless stopped now, the result will be irreparable damage to the structure of competition in the gasoline industry.

Some refiners and jobber distributors are: taking advantage of their power as suppliers, practicing price discrimination by charging their dealers artificially higher prices than they charge other retailers who compete with the dealers, unfairly employee-operating retail outlets in competition with dealers and transfering product to such company stores at prices which are less than the prices these suppliers charge their dealers, selling gasoline at retail in the company stores at a price that does not cover the wholesale price charged their dealers and the cost of operating the company store retail outlets, etc.

Many jobber distributors are using their special lower buying price (as wholesalers) to unfairly compete against the dealers. Half of the motor fuel branded product sold in this country is sold through jobbers. More than half of the jobber wholesale purchases for resale to retailers is being sold direct to consumers through jobber employee-operated retail outlets.

3. Q. **WILL THE DIVORCEMENT/ANTI-COMPETITIVE PRICING LEGISLATION REDUCE COMPETITION IN THE MARKETPLACE TO THE DETRIMENT OF CONSUMERS?**

A. **No!** Since refiner direct (employee-operated) stations do not depend on their individual profitability to remain in business (instead they are supported by upstream profits in crude oil production and refining), their selling prices can be manipulated. Thus, a refiner (or group of refiners operating individually but nevertheless on a common path) could choose to price at retail below or only slightly above the buying (wholesale) price of independent retail dealers (as some refiners have done) and ultimately force these small independent retailers out of business (as thousands have been since the shortage in 1973). Once the independent dealers are removed from the marketplace, the refiner(s) could then charge retail prices much higher than would have been the case under fair competitive practices and recover all lost profits while controlling the entry of new firms into the marketplace by denying them supplies of gasoline.

In fact, this is exactly what has happened in today's marketplace. If allowed to continue, this practice will detrimentally affect consumers by forcing *true* competition out of the marketplace.

Not only do these unfair practices narrow consumer choice and the benefits of competition, they also are destroying the network of dealer stations that offer minor mechanical services at the lowest cost and with the greatest convenience. If refiners are allowed to continue to engage in unfair marketing practices, consumers will find that fewer stations mean fewer competitors, higher gasoline prices and a lack of mechanical services and other conventional services associated with full service dealer operated stations.

4. Q. **WILL THE DIVORCEMENT/ANTI-COMPETITIVE PRICING LEGISLATION DISRUPT THE MARKETPLACE BY SUBSTITUTING LEGISLATED "PRICES" FOR "FREE MARKET FORCES"?**

A. **No!** The legislation will establish what are basic principles of fairness to require all suppliers (refiners and distributors) to treat their purchasers equally when they are buying the same motor fuel, from the same point of distribution, in the same basic units and at the same time. Thus, all purchasers of a given refiner will have the same price (with exceptions as described) for motor fuel purchased under the same marketing terms and conditions.

This is in contrast to the present unfair marketing practice of charging purchasers arbitrarily set prices which many times are different and not cost justified.

Thus, "free market forces" will be allowed under this legislation to set prices by competitive means for the advantage of *all* wholesale purchasers and for ultimate consumers.

5. Q. **WILL THE OPEN SUPPLY SECTION OF THE DIVORCEMENT/ANTI-COMPETITIVE PRICING LEGISLATION GIVE A BRANDED OR CONTRACT (LESSEE) DEALER THE RIGHT TO UNCONDITIONALLY SUBSTITUTE A MOTOR FUEL PRODUCT FROM A DIFFERENT SOURCE FOR THE SAME PRODUCT AVAILABLE FROM THE DEALER'S CONTRACT SUPPLIER (REFINER OR JOBBER)?**

A. **No!** Although the legislation allows a dealer to purchase substitute product and to store and sell such product upon the leased property, thereby permitting the dealer to use existing storage and dispensing equipment (for which the dealer makes lease [rental] payments), if such motor fuel is not readily available from such refiner or distributor upon terms and conditions reasonably comparable to those available to the dealer from another supplier. The dealer may not do so unless the public is clearly notified that the product offered for sale is not the product identified by the trademark posted or displayed on the leased property by the contract supplier.

The immediate effect of this provision is to allow the dealer to take advantage of any available product in the marketplace for the benefit of continuing supply availability for the dealer's customers.

The open supply provision is designed to allow a dealer to take advantage of *lower* priced product available in the marketplace by purchasing such product when his own contract supplier is charging a higher price and is not willing to offer a reasonable comparable price. The open supply provision would have the effect of imposing free market forces on the contract supplier to adopt competitive wholesale prices to keep its own product in the dealer's station.

6. Q. **WILL THE ANTI-COMPETITIVE PRICING PROVISION OF THE DIVORCEMENT/ANTI-COMPETITIVE PRICING LEGISLATION REMOVE THE INCENTIVE FOR JOBBERS TO CONTINUE WHOLESALE OPERATIONS?**

A. **No!** Just as in any business, a firm must earn a profit adequate to justify the investment in time and capital. In a service business, the profit earned is proportionate to the value of the service offered. The wholesale function of distributing motor fuel is essentially a service business, i.e., it provides storage, transportation and availability functions in addition to quantity purchasing, credit and equipment which it may furnish for the customers. Thus to the extent that a jobber provides these services better or cheaper than the customer can itself provide them, the customer will buy from the jobber.

This is the concept behind the continuation of jobbers' functional discounts. Jobbers are a fundamental link in the distribution of motor fuels and the service which they provide must be protected for the benefit of their many customers who are unable (or unwilling) to make purchases direct from the refiners. And for providing this service, jobbers are entitled to earn a fair profit adequate to allow them to remain in business. Also, it should be noted that jobbers will not be allowed to take advantage of their functional discounts in direct retailing in competition with dealers. The functional discount is intended for wholesale transactions and not to gain cost advantage in direct retail operation.

7. Q. **DO EXISTING LAWS (SHERMAN, CLAYTON, ROBINSON-PATMAN, FTC AND THE PETROLEUM MARKETING PRACTICES ACTS) ALREADY AFFORD DEALERS EFFECTIVE PROTECTION AGAINST THE ANTI-COMPETITIVE MARKETING PRACTICES WHICH THE DIVORCEMENT/ ANTI-COMPETITIVE PRICING LEGISLATION WILL CORRECT?**

A. **No!** These existing laws are not effective for a variety of reasons. For example, the intra-company transfer of motor fuel by a refiner (or jobber) to their direct employee-operated retail stations *is not a sale* and therefore is not covered by existing laws. Also, the Petroleum Marketing Practices Act only provides protection regarding notification, termination, cancellation, or refusal to renew or enter a new contract. Furthermore, the great number of direct operated stations make it easy for refiners (and jobbers) to escape the provisions of the Robinson-Patman Act and defend their predatory pricing practices by pointing to the other's marketing methods as a good faith meeting of competition.

8. Q. **WHAT EFFECT WILL DIVORCEMENT/ANTI-COMPETITIVE PRICING LEGISLATION HAVE ON RETAIL PRICES?**

A. **Favorable!** Because substantially more stations will be in the business of offering sales of gasoline and other services to consumers, there will be increased competition and therefore lower prices than would result under market conditions where only a few firms were available to meet the demands of consumers. There will be no increase in the average retail price charged consumers as a result of this legislation. In fact, with the introduction of fair pricing and the end of refiner's present restricted practices toward dealers, the consuming public will benefit by receiving lower prices overall.

Not only will the consumer benefit from a price standpoint, the more dealers in a market area result in increased competition to attract and hold consumer patronage by offering the greatest overall value at the lowest price – or in other words, better *service* at real *service stations.*

9. Q. **WHAT ELSE BESIDES HAVING TO PAY HIGHER PRICES DO CONSUMERS STAND TO LOSE IF THE DIVORCEMENT/ANTI-COMPETITIVE PRICING LEGISLATION IS NOT ENACTED AND AN ADDITIONAL SUBSTANTIAL**

NUMBER OF SERVICE STATION DEALERS ARE UNFAIRLY FORCED OUT OF THE GASOLINE INDUSTRY?

A. **Convenient Access to Service!** Consumers will lose the convenience of trading with a local dealer who is in business to meet his total automotive needs — from gasoline to tune-ups to minor and major repairs. Full service dealers will not be available to provide the fast, convenient, and lower cost minor mechanical services, which the consumer knows to be the most effective involving the least loss of time and the lowest overall cost.

10. Q. **WHAT EFFECT WILL ENACTMENT OF DIVORCEMENT/ANTI-COMPETITIVE PRICING LEGISLATION HAVE ON MOTOR FUEL (PARTICULARLY GASOLINE) SUPPLIES AVAILABLE TO THE PUBLIC?**

A. **None!** Refiners have historically earned good profits upstream from retailing in crude oil production and refining. In fact, retailing is considered a drain on a refiner's upstream profits, in a competitive marketplace; and, their stockholders should not tolerate a major sector of the firm, which does not earn an adequate return on its investment. If this were clearly known to the average stockholders, they would insist that a firm remove itself from retailing and devote its best efforts to those parts of the firm's business that will earn a higher return. Thus an emphasis on production and refining to maximize its return will result in adequate supplies being available to the public and probably at a lower cost otherwise.

11. Q. **WHAT EFFECT WILL ENACTMENT OF DIVORCEMENT/ANTI-COMPETITIVE PRICING HAVE ON COMPETITION AT THE RETAIL LEVEL?**

A. **Competition will be enhanced!** The consuming public will benefit in many ways from the increased competition of many independent dealers operating in the climate of basic fairness that will result from the passage of this legislation. In contrast, without this legislation there will be fewer stations and less competition after refiners and jobbers have forced most dealers out of the marketplace.

12. Q. **ARE REFINER AND JOBBER DIRECT EMPLOYEE-OPERATED COMPANY STATIONS MORE EFFICIENT AND, THEREFORE, COST JUSTIFIED IN SELLING AT LOWER PRICES THAN DEALERS?**

A. **No!** Lower prices at refiner and jobber direct employee-operated stations are not justified by operating cost efficiencies in comparison to comparable dealer operations, but are supported by upstream profits and/or the higher wholesale prices charged to their captive branded dealers and/or the advantage of a lower buying price as a jobber, notwithstanding the intent to sell that product at retail.

13. Q. **WILL ENACTMENT OF DIVORCEMENT/ANTI-COMPETITIVE PRICING LEGISLATION LIMIT ENTRANTS TO THE RETAIL MARKET OR PROTECT INEFFICIENT DEALERS?**

A. **No!** To the contrary, easier entrance will be encouraged and improved competitive conditions will be epxerienced for the consumers' benefit. There is nothing in the legislation that provides *any* assurance any dealer will remain in business . . . only that all dealers will have a basic and reaonable fair opportunity to be competitive (with a starting price) with other gasoline retailers. If some dealers can match or beat the efficiencies and services offered in the marketplace by other dealers, the more efficient dealers will survive and the inefficient will not survive.

14. Q. **WHAT EFFECT WILL ENACTMENT OF DIVORCEMENT/ANTI-COMPETITIVE PRICING LEGISLATION HAVE ON (1) EMERGENCY ROAD SERVICES; (2) MINOR MECHANICAL REPAIR SERVICES AT GASOLINE STATIONS; (3) ON SENIOR CITIZENS, WHO ARE ON FIXED INCOMES; AND (4) DISABLED PERSONS, WHO MUST HAVE FULL SERVICE AVAILABILITY, AS WELL AS THE GENERAL POPULATION OF MOTORISTS, WHO EXPERIENCE A NEED FOR AND MUST HAVE THE AVAILABILITY OF THESE SERVICES?**

A. **A Positive Effect!** Unless fairness is restored so as to permit and enable full service (and self-serve) dealer operated stations to compete in motor fuel (gasoline) sales, services with gasoline will disappear and the comfort, convenience and ability of consumers to travel by automobile will be seriously handicapped by extreme delays and higher costs. The public safety and welfare will be adversely affected. Senior citizens and the disabled will not be able to obtain needed services at low prices at conveniently located stations throughout America.

15. Q. **DID THE UNITED STATES SUPREME COURT REJECT THE MARYLAND STATE DIVORCEMENT LAW AS ANTI-COMPETITIVE?**

A. **No!** The Court said the same thing about the Maryland State Divorcement Law as it had said about the Robinson-Patman Act . . . that the Court was not ruling on the wisdom of the law or whether it was anti-competitive in its opinion, but only that it was constitutional to enact such law to provide relief from practices the Maryland State Lawmakers considered to be wrong.

16. Q. **WHAT STATES HAVE ALREADY ENACTED LAW TO STOP THE UNFAIRNESS OF REFINER AND JOBBER EMPLOYEE-OPERATED STATIONS?**

A. **Washington, D. C.** – Effective January 1, 1981
Refiner operation of retail stations are prohibited;

Maryland and Connecticut – Divorced Refiners from employee-operated retail stations;

Delaware – Prohibits refiners from employee-operated retail stations (exception – on turnpikes);

Virginia – Declared moratorium on refiner employee-operated stations;

Georgia – Prohibits jobbers from selling at retail in their employee-operated retail stations any gasoline the jobber purchased *as* a jobber at jobber *discounts*. (Constitutionality test – now in 5th Circuit on appeal – lower federal court [Atlanta] found constitutional.)

17. Q. **ARE REFINERS OR JOBBERS TRUE COMPETITORS AT RETAIL, WHEN THEY CONTROL WHOLESALE SUPPLIES TO DEALERS; CONTROL WHOLESALE PRICE CHARGED DEALERS, AND, CONTROL DEALERS WHO ARE REQUIRED BY CONTRACT TO PURCHASE THAT PRODUCT?**

A. **No!** Refiners and jobbers who have used their upstream advantage to compete with dealers at retail by selling at retail at a price that does not cover the wholesale price charged dealers and the cost of employee-operating the retail stations are not competitors in the true sense. They are predators (either intentional or not) engaged in unfair marketing practices and they are destroying competition and small business in the gasoline industry.

18. Q. **WHAT EFFECT WILL ENACTMENT OF DIVORCEMENT/ ANTI-COMPETITIVE PRICING LEGISLATION HAVE ON EMPLOYMENT OPPORTUNITIES AND THE ECONOMY?**

A. **A Positive Effect!** Job opportunities will be preserved and will increase for skilled, semi-skilled and unskilled workers, for young people needing part-time or full time employment, and for small business entrepreneurship opportunities. The local and national economy will be benefitted advantageously.

19. Q. **IS DIVORCEMENT LEGISLATION NECESSARY IN ADDITION TO THE ANTI-COMPETITIVE PRICING PROVISIONS?**

A. **Yes!** Divorcement is necessary to protect the marketing segment of the oil industry from the excessive control by a few refiners who would control marketing as they now control all other segments . . . they control: 93% of the Nation's proven domestic crude oil ;80% of refining capacity; 90% of crude oil pipelines; and more than 75% of the finished product pipeline capacity.

By 1990 there will be (by one major oil company's estimation) an 18% reduction in the consumption of motor fuel. With a greatly reduced market for refined product, refiners could be expected to take whatever steps are necessary to gain a larger share of the retail market. One possible move by the refiners would be to greatly increase the subsidization of marketing through direct stations in order to increase refinery runs to economic levels of operation and thereby increase their overall profitability. The fact that this trend is already underway is evident from the increased emphasis on marketing by the big oil companies. Capital spending on marketing increased 23% in 1979; 26% in 1980; and is projected to increase 29% in 1981 (over the previous years).

20. Q. **WHAT AUTHORITIES HAVE EXAMINED RETAIL MARKETING PRACTICES AND HAVE EXPRESSED FINDINGS THAT SUPPORT THE CONCEPT TO CORRECT THESE ANTI-COMPETITIVE PRACTICES THAT DENY DEALERS THE BASIC FAIRNESS INTENDED BY THE PROPOSED DIVORCEMENT/ANTI-COMPETITIVE PRICING LEGISLATION?**

A. **Partial answer includes**
(1) "FTC Report on Anti-competitive Practices In The Marketing of Gasoline" (1965 Hearings), June 30, 1967;
(2) "House Small Business Committee Report on Problems of Small Retail Petroleum Marketers," October 20, 1976;
(3) "Petroleum Marketing Practices Act of 1978," Title III, Requirements for Study and Intended emergency relief;
(4) D.O.E., Office of Competition's Trend in Company Stores, December 1979;
(5) "House Small Business Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business," transcript of 8 hearings on Gasoline Marketing Practices, 1979;
(6) House Small Business Committee Report 96-1068, June 3, 1980, filed after hearings and investigation of petroleum industry practices by Subcommittee on Energy, Environment, Safety and Research;

(7) "Big Oil: A Citizen's Factbook on The Major Oil Companies," Center for Science In The Public Interest, 1973; 1974;

(8) Allvine/Houston/Phillips, "The Case for Legislative Relief From The Impending Destruction Of Small Business And Competition In The Gasoline Industry." Georgia Association of Petroleum Retailers, January 22, 1980;

(9) D.O.E., Office of Competition, Part I, Title III Report, May, 1980 *and* J. W. Wilson & Associates, Inc. Economic Counsel, Washington, D. C., "Report On Part I The State Of Competion In Gasoline Marketing; The Effect of Refiner Operations at Retail," September, 1980; and transcript of all related Hearings.

(10) Small Business Administration's contracted Final Report from the Institute of Public Administration, Washington, D. C., "An Analysis of The Department of Energy's Fuel Allocation Plan and Related Policies," particularly pages 110-117 and especially page 115, 3rd paragraph and 1st sentence on page 116, June 1980: recommending divorcement of refiners and jobbers from retailing . . . and, that decontrol not be allowed until divorcement law is in place.

(11) Testimony on legislation by the National Association of Small Business;

(12) Testimony on legislation by the National Federation of Independent Businesses;

(13) White House Conference on Small Business, 1980;

(14) American Petroleum Institute, testimony by Mr. Paul D. Collier before U. S. Senator Howard Metzenbaum's Subcommittee, openly admitted the retail marketing system *as it was designed by refiners and as it exists today* is a disadvantage to the independent branded dealer stations. The admission by the representative of API is significant in that it succinctly identifies the problem. The problem is that independent service station dealers are being squeezed out of business.

(15) The Office of Advocacy, Small Business Administration, in testimony on the divorcement/anti-competitive pricing legislation said: "If we choose at this moment between no legislation and 'imperfect' legislation which does not have the equally enthusiastic support of all small business elements in this industry, it is far more important to have even the 'imperfect' legislation. We can all work to perfect it as soon as Congress reconvenes. *But the longer we go without even imperfect legislation, the fewer small businesses there will be to participate in the perfecting process.*"

(16) Federal Trade Commission — According to *The Oil Daily* (November 4, 1980): Complaint filed against eight refiners (Exxon, Texaco, Gulf, Mobil, Standard Oil of California, Standard Oil of Indiana, Arco, Shell) November, 1980 charges the refiners have individually and collectively:

"have restrained trade and maintained and reinforced a noncompetitive market structure in the refining of crude oil into petroleum products.

"To this end, respondents (the oil companies) engaged in a common course of conduct that restrained trade and commerce at every functional level of the petroleum industry."

The Oil Daily further said the complaint charged that the companies violated antitrust laws by using their leverage over refining and marketing sectors of the industry . . . and that it is expected resolutions of the complaint will take into the 1990's.

Prepared and Published By:

Jack W. Houston, Chairman
Government Affairs Committee
Service Station Dealers of America
(Executive Director, Georgia Association of Petroleum Retailers, Inc.)

(202 / 293-6868 – 404 / 373-0605)

February, 1981

Go For Fairness

THE FINAL CURTAIN IS FALLING ON DEALERS AND COMPETITION IN THE MARKETING OF MOTOR FUEL. FAIRNESS TO DEALERS IS FAIRNESS TO CONSUMERS. ENACT THE DIVORCEMENT/ANTI-COMPETITIVE PRICING LEGISLATION.

H.R. 1362 & S. 326

Service Station Dealers of America, Inc.

Formerly
National Congress
of Petroleum Retailers

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Attachment No. 3
Ref. page 3

28

Questions
&
Answers

S.326 & H.R.1362

Small Business Motor Fuel Marketer Preservation Act of 1981

97th Congress, 2nd Session

SSDA
SERVICE STATION DEALERS OF AMERICA

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INTRODUCTION

"Congress is at a critical juncture regarding the structure of competition in the petroleum industry. We are either going to have a highly competitive gasoline industry or else one dominated by a few large integrated petroleum companies. If Congress desires to preserve for future generations a highly competitive gasoline industry, then it must act quickly for the structure of competition in this industry is on the brink of ruin."*

"The Final Curtain Is Falling on Dealers, And Competition In The Marketing of Motor Fuel."†

"Traditionally, Shell has relied on Independent Dealers and jobbers as they provide the most efficient and competitive means of distribution, most of our automotive gasoline."¶

OPEN SUPPLY "... provisions of the bill prohibiting producers or refiners from restraining, interfering with, or in any way preventing, the dealer-operator from purchasing alternative sources of supply, and reselling the same to the public (with adequate disclaims of brand name),... could be highly procompetitive."§

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*Copyright 1980 -- "The Case For Legislative Relief From The Impending Destruction Of Small Business And Competition In The Gasoline Industry", Page 63.

†Copyright 1981 -- "20 Questions & Answers, H.R.1362 & S.326."

¶Shell Oil Company Comments, ERA, August 19, 1980 (underscoring added for emphasis.)

§Federal Trade Commission, Bureau of Competition, Assistant Director, Ronald B. Rowe, before subcommittees of House Small Business Committee on H.R. 6722, May 20, 1980. (Underscoring added.)

28 QUESTIONS & ANSWERS ON THE REVISED SMALL BUSINESS MOTOR FUEL MARKETER PRESERVATION ACT OF 1981

S.326 & H.R. 1362

1. Q. **WHAT ARE THE KEY PROVISIONS OF S.326 AS AMENDED BY THE SENATE JUDICIARY COMMITTEE?**

A. Divorcement [Sec. 2(a)]
The sixteen largest integrated refiners will be prohibited from directly or indirectly operating any retail gasoline outlets. They will be permitted to continue ownership of retail properties and leasing of same to dealers.

Open Supply [Sec. 2(b)]
It would be unlawful for anyone to interfere with the right of a dealer to purchase, store or sell motor fuel products obtained from anyone else provided it is not available from the regular supplier upon terms and conditions reasonably comparable to those available to the dealer from any other such persons.

2. Q. **WHAT KEY PROVISION AFFECTING JOBBERS WAS REMOVED FROM S.326 BY THE SENATE JUDICIARY COMMITTEE?**

A. "Wholesale Transfer Price", earlier referred to as "Rack Pricing" -- This provision was criticized as unworkable. Jobbers claimed it would make it difficult for them to compete.

To accommodate jobbers' concern, the wholesale transfer price provisions were removed from S.326.

3. Q. **WHAT OTHER CHANGES DID THE SENATE JUDICIARY COMMITTEE MAKE IN S.326?**

A. **a.** The Committee removed the requirement that dealers be given the right of first refusal if the refiner sells its stations. This provision duplicated an existing provision under the Petroleum Marketing Practices Act. (Note, in H.R. 1362 this language is used to extend SBA loan guarantees for dealers wishing to purchase stations offered for sale by refiners.)

b. The Committee removed criminal penalties for violation of the Act.

4. Q. **WHY IS SUCH LEGISLATION NECESSARY?**

A. To Preserve Competition! The destruction of small business and competition is in an advancing stage. Unless stopped now, the result will be irreparable damage to the structure of competition in the gasoline industry.

Some refiners are: taking advantage of their power as suppliers, practicing price discrimination by charging their dealers artificially higher prices than they charge other retailers who compete with the dealers, and transfering product to such company stores at prices which are less than the prices these suppliers charge their dealers, selling gasoline at retail in the company stores at a price that does not cover the wholesale price charged their dealers and the cost of operating the company store retail outlets, etc.

5. Q. **WILL DIVORCEMENT OF THE SIXTEEN REFINERS FROM RETAILING REDUCE TRUE COMPETITION TO THE DETRIMENT OF CONSUMERS?**

A. No! Since refiner direct (employee-operated) stations do not depend on their individual profitability to remain in business (instead they are supported by upstream profits in crude oil production and refining), their selling prices can be manipulated. Thus, a refiner (or group of refiners operating individually but nevertheless on a common path) could choose to price at retail below or only slightly above the buying (wholesale) price of independent retail dealers (as some refiners have done) and ultimately force these small independent retailers out of business (as thousands have been since the shortage in 1973). Once the independent dealers are removed from the marketplace, the refiner(s) could then charge retail prices much higher than would have been the case under fair competitive practices and recover all lost profits while controlling the entry of new firms into the marketplace by denying them supplies of gasoline.

In fact, this is exactly what has happened in today's marketplace. If allowed to continue, this practice will detrimentally affect consumers by forcing true competition out of the marketplace.

Not only do these unfair practices narrow consumer choice and the benefits of competition, they also are destroying the network of dealer stations that offer minor mechanical services at the lowest cost and with the greatest convenience. If refiners are allowed to continue to engage in unfair marketing practices, consumers will find that fewer stations mean fewer competitors, higher gasoline prices and a lack of mechanical services and other conventional services associated with full service dealer operated stations.

6. Q. **WILL DIVORCEMENT AND OPEN SUPPLY PROVISIONS REMOVE THE INCENTIVE FOR JOBBERS TO CONTINUE WHOLESALE OPERATIONS?**

A. No! The wholesale function of distributing motor fuel is essentially a service business, i.e., it provides storage, transportation and availability functions in addition to quantity purchasing, credit and equipment which it may furnish for the customers. Thus to the extent that a jobber provides these services better or cheaper than the customer can itself provide them, the customer will buy from the jobber.

7. Q. **DO EXISTING LAWS (SHERMAN, CLAYTON, ROBINSON-PATMAN, FTC AND THE PETROLEUM MARKETING PRACTICES ACTS) ALREADY AFFORD DEALERS EFFECTIVE PROTECTION AGAINST THE ANTI-COMPETITIVE MARKETING PRACTICES WHICH THE DIVORCEMENT AND OPEN SUPPLY PROVISIONS WILL CORRECT?**

A. No! These existing laws are not effective for a variety of reasons. For example, the intra-company transfer of motor fuel by a refiner (or jobber) to direct employee-operated retail stations is not a sale and therefore is not covered by existing laws. Also, the Petroleum Marketing Practices Act only provides protection regarding notification, termination, cancellation, or refusal to renew or enter a new contract. Furthermore, the great number of direct operated stations make it easy for refiners (and jobbers) to escape the provisions of the Robinson-Patman Act and defend their predatory pricing practices by pointing to the other's marketing methods as a good faith meeting of competition.

8. Q. **WHAT EFFECT WILL DIVORCEMENT AND OPEN SUPPLY PROVISIONS HAVE ON RETAIL PRICES?**

A. Favorable! Because substantially more stations will be in the business of offering sales of gasoline and other services to consumers, there will be increased competition and therefore lower prices than would result under market conditions where only a few firms were available to meet the demands of consumers. There will be no increase in the average retail price charged consumers as a result of this legislation. In fact, with the introduction of fair pricing and the end of refiner and jobber's present restricted practices toward dealers, the consuming public will benefit by receiving lower prices overall.

Not only will the consumer benefit from a price standpoint, the more dealers in a market area result in increased competition to attract and hold consumer patronage by offering the greatest overall value at the lowest price -- or in other words, better service at real service stations.

9. Q. **OPEN SUPPLY --**

a. Will it "force Shell (and others) out of the branded gasoline business?

b. Will it "irreparably harm" branded retailers?

c. Will it "substantially alter gasoline marketing?

d. Will it "have a significant impact on Shell" (and others)?

These four questions were raised in Shell's letter to its dealers dated December 4, 1981. The following answers are responses to Shell but are also applicable to all refiners.

A. a. Open Supply will not force Shell or any other major oil company out of the branded gasoline business.

Open supply merely establishes a basic and clear right for a (Shell) branded retailer to purchase another company's lower priced gasoline, to store in existing underground tanks, to use existing dispensing pumps, etc. (for which most dealers pay an economic rent -- a fair return on investment is earned by such oil companies that charge economic rents) provided that Shell is notified and is given the opportunity to meet the lower price by offering Shell gasoline to the Shell dealer at a reasonably comparable wholesale price.

Shell will continue to have the right to insist upon Shell retailers selling only Shell gasoline by staying competitive in wholesale prices.

Shell would make the choice whether it would or would not remove its gasoline from any retailer by its decision to meet or not to meet competition.

b. Open Supply will not irreparably harm branded retailers.

Open Supply will help branded retailers meet price competition from another branded retailer or an unbranded retailer that is causing a reduction in the number of gallons sold and the volume of other products and services sold by branded retailers.

Shell contends dealers can now buy non-Shell gasoline. Open Supply would remove Shell's rule "to de-identify your station" and would allow dealers to de-identify one or more pumps without loss of the right to continue selling through remaining pumps under the Shell trademark.

c. Open Supply will not alter gasoline marketing.

Shell's charge is a hollow threat to remove brand identity. Nationally recognized trademarks and profits therefrom are a way of life that Shell and other major integrated oil companies could ill-afford to scrape. Offering equitable wholesale prices to retailers for branded gasoline to comparably meet lower prices for similar (unbranded) gasoline will enhance sales (and profits) of branded products and maximize consumer patronage of Shell products.

d. Open supply will not significantly impact on Shell.

Open Supply will not impair the value of the trademark. Making another product or if Shell wishes Shell products available at lower prices certainly will improve consumer appreciation and recognized value of the Shell Trademark. The Open Supply provision of S.326 requires proper notice to consumers on dispensing pumps when other than a Shell product would be sold. Shell's trademark would thus be protected and consumers would be protected from deception. Consumers would have no trouble identifying the source of a product quality problem.

Dealers are responsible small business persons capable of complying with Octane Posting requirements, controlling the delivery to avoid leaded fuel being mixed with unleaded fuel. Consumers likewise are capable of understanding availability of another product on the same property with a Shell product where there is the required notification posted on a dispensing pump.

Shell's expressions are nothing more than a futile attempt to cause substantial confusion, uncertainty and perhaps deception to its dealers. Shell is in this manner attempting to defeat S.326 so that Shell can continue to charge Shell dealers a wholesale price that will not allow Shell dealers to realistically meet competition in the marketplace.

Shell dealers will be given the right under Open Supply to seek out one or more lower priced good quality (sometimes same brand) product with which to meet competition when Shell itself is unwilling to be competitive with its wholesale prices to dealers.

10. Q. **WHAT IN ADDITION TO HIGHER PRICES DO CONSUMERS STAND TO LOSE IF DIVORCEMENT AND OPEN SUPPLY PROVISIONS ARE NOT ENACTED INTO LAW?**

A. Convenient Access to Service! Consumers will lose the convenience of trading with a local dealer who is in business to meet his total automotive needs -- from gasoline to tune-ups to minor and major repairs. Full service dealers will not be available to provide the fast, convenient, and lower cost minor mechanical services, which the consumer knows to be the most effective involving the least loss of time and the lowest overall cost.

11. Q. **WHAT EFFECT WILL ENACTMENT OF DIVORCEMENT AND OPEN SUPPLY HAVE ON MOTOR FUEL (PARTICULARLY GASOLINE) SUPPLY AVAILABILITY?**

A. None! Refiners have historically earned good profits upstream from retailing in crude oil, production, and refining. In fact retailing is considered a drain on a refiner's upstream profits, in a competitive marketplace; and, their stockholders should not tolerate a major sector of the firm which does not earn an adequate return on its investment. If this were clearly known to the average stockholders, they would insist that a firm remove itself from retailing and devote its best efforts to those parts of the firm's business that will earn a higher return. Thus an emphasis on production and refining to maximize a refiner's return will result in adequate supplies being available to the public and probably at a lower cost otherwise.

12. Q. **WILL ENACTMENT OF DIVORCEMENT AND OPEN SUPPLY LIMIT ENTRANTS TO THE RETAIL MARKET OR PROTECT INEFFICIENT DEALERS?**

A. No! To the contrary, easier entrance will be encouraged and improved competitive conditions will be experienced for the consumers' benefit. There is nothing in the legislation that provides any assurance any dealer will remain in business ... only that all dealers will have a basic and reasonable fair opportunity to compete. The more efficient dealers will survive and the inefficient will not survive.

13. Q. **WHAT EFFECT WILL ENACTMENT OF DIVORCEMENT AND OPEN SUPPLY HAVE ON (1) EMERGENCY ROAD SERVICES; (2) MINOR MECHANICAL REPAIR SERVICES AT GASOLINE STATIONS; (3) ON SENIOR CITIZENS, WHO ARE ON FIXED INCOMES; AND (4) DISABLED PERSONS, WHO MUST HAVE FULL SERVICE AVAILABILITY, AS**

WELL AS THE GENERAL POPULATION OF MOTORISTS, WHO EXPERIENCE A NEED FOR AND MUST HAVE THE AVAILABILITY OF THESE SERVICES?

A. A Positive Effect! Unless fairness is restored so as to permit and enable full service (and self-serve) dealer operated stations to compete in motor fuel (gasoline) sales, services with gasoline will disappear and the comfort, convenience and ability of consumers to travel by automobile will be seriously handicapped by extreme delays and higher costs. The public safety and welfare will be adversely affected. Senior citizens and the disabled will not be able to obtain needed services at low prices at conveniently located stations throughout America.

14. Q. **DID THE UNITED STATES SUPREME COURT REJECT THE MARYLAND STATE DIVORCEMENT LAW AS ANTI-COMPETITIVE?**

A. No! The Court said the same thing about the Maryland State Divorcement Law as it had said about the Robinson-Patman Act ... that the Court was not ruling on the wisdom of the law or whether it was anti-competitive in its opinion, but only that it was constitutional to enact such law to provide relief from practices the Maryland State Lawmakers considered to be wrong.

15. Q. **WHAT STATES HAVE ALREADY ENACTED LAW TO STOP THE UNFAIRNESS OF REFINER AND JOBBER EMPLOYEE-OPERATED STATIONS?**

A. Washington, DC -- Effective January 1, 1981
Refiner operation of retail stations are prohibited;
Maryland and Connecticut -- Divorced Refiners from employee-operated retail stations;
Delaware -- Prohibits refiners from employee-operated retail stations (exception -- on turnpikes);

Virginia -- Declared moratorium on refiner employee-operated stations;

Georgia -- Prohibits jobbers from selling at retail in their employee-operated retail stations any gasoline the jobber purchased as a jobber at jobber discounts (Constitutionality test final - See 5th Circuit/Certiorari denied - found constitutional.)

16. Q. **ARE REFINERS TRUE COMPETITORS AT RETAIL?**

A. No! Because they control wholesale supplies to dealers, control wholesale prices charged dealers, and control dealers who are required by contract to purchase that product. Some refiners have used their upstream advantage to compete with dealers at retail by selling at retail at a price that does not cover the wholesale price charged dealers and the cost of employee-operating the retail stations. These refiners are not competitors in the true sense. They are predators (either intentional or not) engaged in unfair marketing practices and they are destroying competition and small business in the gasoline industry.

17. Q. **WHAT EFFECT WILL DIVORCEMENT AND OPEN SUPPLY HAVE ON EMPLOYMENT OPPORTUNITIES AND THE ECONOMY?**

A. A Positive Effect! Job opportunities will be preserved and will increase for skilled, semi-skilled and unskilled workers, for young people needing part-time or full time employment, and for small business entrepreneurship opportunities. The local and national economy will be benefitted advantageously.

18. Q. **IS DIVORCEMENT NECESSARY IN ADDITION TO THE OPEN SUPPLY PROVISIONS?**

A. Yes! Divorcement is necessary to protect the marketing segment of the oil industry from the excessive control by a few refiners who would control marketing as they now control all other segments ... they control: 93% of the Nation's proven domestic crude oil; 80% of refining capacity; 90% of crude oil pipelines; and more than 75% of the finished product pipeline capacity.

By 1990 there will be (by one major oil company's estimation) an 18% reduction in the consumption of motor fuel. With greatly reduced market for refined product, refiners could be expected to take whatever steps are necessary to gain a larger share of the retail market. One possible move by the refiners would be to greatly increase the subsidization of marketing through direct stations in order to increase refinery runs to economic levels of operation and thereby increase their overall profitability. The fact that this trend is already underway is evident from the increased emphasis on marketing by the big oil companies. Capital spending on marketing increased 23% in 1979; 26% in 1980; and was projected to increase 29% in 1981 (over the previous years).

19. Q. **HAVE SOME OF THE 16 REFINERS WHO WOULD BE DIVORCED FROM RETAILING SOLD BRANDED GASOLINE AT RETAIL IN THEIR (COMPANY STORES) AT LESS THAN OR VERY CLOSE TO WHAT THEIR LESSEE DEALERS ARE FORCED TO PURCHASE FROM THE REFINER AT WHOLESALE?**

A. Yes. It must be remembered that the overhead in these stations, both the company operated and lessee are independent dealer stations, includes state and local property taxes, payroll and payroll taxes including social security unemployment taxes, maintenance, insurance, utilities and other similar business expenses. A dealer markup of less than a penny would hardly be adequate to cover this overhead and provide the station owner, be it company or independent dealer, with a profit. No economic efficiencies can account for this practice.

20. Q. **ARE INDEPENDENT DEALERS AS EFFICIENT AS COMPANY-OPERATED OUTLETS?**

A. Yes. Independent dealers are as efficient as company-operated outlets. Dealers have more drive to maximize customer satisfaction. They exhibit more interest in and their service to consumers is superior.

An illusion of superiority in efficiency is created by refiners' behavioral practices. A long-standing method of loading wholesale prices charged independent dealers selling the refiners' trademarked identified products causes this illusion. The practice of refiners' company-operated outlets selling gasoline to consumers at retail prices that are less than that loaded wholesale price and/or less than that loaded wholesale price plus a property rental value equivalent to rentals charged dealers plus other operating costs of the retail outlet must be corrected to restore competition based on efficiencies.

Divorcement of the largest refiners from retail ing and prohibition of such anti-competitive - dual marketing practices will restore equity an sanity as well as allow the more efficient to d survive in the retail marketing of petroleum products. S.326 is intended to accomplish that objective.

21. Q. **IS THERE ANY REASON WHY AN INDEPENDENT DEALER CANNOT OPERATE A HIGH-VOLUME OPERATION AS EFFICIENTLY AS THE MAJOR INTEGRATED REFINERS?**

A. No. There is no reason why an independent dealer cannot operate a high-volume operation as efficiently as major integrated refiners or jobbers.

If integrated refiners continue to withhold their best high-volume locations as company-operated outlets and if they continue current marketing pratices, efficiency will not determine who survives in the marketplace. The ability to transfer product to company-operated outlets by refiners at less than dealer wholesale prices, the ability to ignore property rental cost and other actual operating costs of retailing, and the ability to sustain an unlimited economic loss will destroy dealers regardless of how efficient dealers are.

Texaco's new Atlanta area self-serve retail outlets that are company operated are moving high volumes because they are transferring product to those locations at wholesale prices that obviously are much lower than Texaco charges the dealers (see evidence submitted during Senate hearings). Texaco is also not covering in their retail prices the $5,000.00 to $6,000.00 monthly rental they tied to the properties that caused the eviction of dealers from those locations. That sort of practice is not efficiency. Any dealer, given the same low wholesale price and low rental cost, could be just as efficient and reach just as high a volume as Texaco has accomplished by company operating these outlets. Divorcement and Open Supply will provide relief essential to preserving competition.

22. Q. **NOW THAT CONTROLS HAVE BEEN LIFTED, WHAT PROTECTIONS DO INDEPENDENT DEALERS HAVE IF THERE IS A SEVERE SUPPLY CUT-OFF?**

A. None! Dealer franchise agreements, lease and supply contracts, provide a refiner may be excused from performance at any time and for any reason when there is insufficient supply from a cause reasonably beyond the refiner's control. For example:

Article XII of the Shell Oil Company dealer lease reads:

> EXCUSES FOR NON-PERFORMANCE. Shell shall be excused from performance of its obligations under this Agreement when and to the extent

> that such performance is delayed or prevented by any cause reasonably beyond Shell's control. If Shell's supply of any Product at Shell's plant is or will be insufficient, at any time or for any reason, for Shell to fill all orders which normally are or would be filled therefrom (whether from contract or non-contract purchasers), Shell may discontinue deliveries of such products hereunder or apportion deliveries thereof among orders received from dealer and from other purchasers, in such manner as Shell in its sole discretion, may determine.

Article V of the Chevron U.S.A. dealer lease reads:

> (a) There shall be no obligation to deliver or to receive or use the products herein described when and while, and to the extent that, the receiving or using or manufacture or making deliveries in the customary manner are prevented or hindered by act of God, fire, riot, labor disturbances, accident, war or the acts of any government (whether foreign or domestic, federal, state, county or municipal) or any causes beyond the reasonable control of the party affected, whether or not similar to any of the foregoing causes. In cases of partial or total interruption or loss or shortage of transportation facilities or supplies, or shortage of products deliverable hereunder, Chevron shall have the right to pro-rate the delivery of available products among dealer and other outlets and customers of Chevron, contract ...

There is no assurance product would be prorated in case of a supply cutoff. The opportunity for refiners and for jobbers to favor their company-operated outlets is self-evident and could be fully expected. Behavioral practices of the past certainly indicates little regard would be given to equitably treat dealers in event of a severe supply cut-off.

23. Q. **BASED ON PAST EXPERIENCES, WHAT DO YOU EXPECT WOULD HAPPEN TO THE INDEPENDENT DEALER WITHOUT THIS LEGISLATION IF THERE WAS ANOTHER SEVERE SHORTAGE?**

A. There would be an overnight slaughter of dealer-operated outlets. Independent dealers would face abrupt total loss of product or disproportionately larger loss than company--operated outlets would experience, and customers of dealers would not only be switched to being customers of company-operated outlets but will be required to use more fuel to reach the fewer company-operated locations that have product to sell.

History is our best teacher. Without passage of divorcment and open supply legislation the largest refiners would repeat their self-serving and selfish actions that caused Congress to enact the provisions of the Emergency Petroleum Allocation Act.

24. Q. **HAS THERE BEEN A SUCCESSFUL SUIT UNDER THE EXISTING LAW CHALLENGING PREDATORY PRACTICES BY REFINERS?**

A. No! To the contrary, the courts have declared that a transfer of product from storage of a refiner, or a jobber, is not a sale but an intra-company activity that is not a violation of anti-trust laws. There are therefore no clearly stated laws that afford protection of competition and small business dealers in the marketing of petroleum products from the structural and behavioral activities sought to be corrected in S.326. The only way to effectively prohibit such conduct so as to preserve competition and small business opportunities in the petroleum industry is by enactment of S.326.

Even if there is implied prohibition against such behavioral activities of refiners in the anti-trust laws and/or in the FTC Act, relief is not reachable. The recent actions against the refiners which FTC dropped is evidence that small business does not have any chance of success under present laws if, in fact, such laws are applicable.

25. Q. **WHY IS THE OPEN SUPPLY PROVISION NECESSARY?**

A. The open supply provision of S.326 is necessary to provide a competitive climate that has long been missing among the nation's dealers who purchase refiner product for resale under trademarks. There has been little to no downward pressure on refiner, and jobber, wholesale prices charged dealers for branded products purchased for resale.

Artificially higher wholesale prices have historically been charged branded dealers as a consequence. Yet, the same product has been sold by the same refiners to other than their branded dealers at substantially lower prices than are justified by reasonable charges for trademark, advertising and credit card processing costs associated with branded product sales. It was competition from other sources of supply that has resulted in lower prices (at wholesale) that has caused the unreal and unjustified differences in retail product prices.

Clearly establishing that dealers, and jobbers, are free (some say dealers already have that right -- there is evidence that supports the need for S.326) to purchase the same brand from another supplier or to purchase, store, and sell another product on the premises will provide downward pressure on wholesale prices to branded dealers. Since the largest portion of all products purchased by consumers is branded products, the public's potential benefit is too great to estimate.

An open supply provision will further the original intent of the antitrust law ... to prohibit tying arrangements or exclusive dealing agreements unless suppliers meet competition.

An open supply provision will permit the dealer whose supplier has priced him out of the competition to substitute another product with appropriate notice to consumers.

An open supply provision will unlock the invisible but effective door that has been shut too long that keeps other suppliers from calling on branded dealers, which suppliers may offer an equally good product at substantially lower prices.

Yes, the open supply and divorcement provisions are necessary to effectively ensure maximum benefits flow to consumers in the normal and usual manner that should and must exist under an unencumbered free enterprise marketing system upon which this nation has prospered.

26. Q. **WHAT IS THE TRUTH ABOUT THE NUMBER OF COMPANY STORE OUTLETS FOR THE SIXTEEN LARGEST REFINERS?**

A. Even though the number of company store outlets for the sixteen largest refiners decreased 235 from 1972 through 1978, when adjusted for the increased average monthly volume sold by the remaining company stores, the effect was the same as building 6,076 new company store outlets. The additional volume of products sold by the refiners could not have been sold without lowering of the price and underselling dealers as they did while holding the dealers wholesale prices at a level that did not permit the dealer to compete with them. The open supply provision coupled with the prohibition for these refiners to operate retail outlets will restore equity and fairness in the marketing of gasoline and preserve competition for the benefit to consumers.

27. Q. **ARE DEALERS' REAL AIM TO DIVORCE JOBBERS FROM RETAILING?**

A. No! Though divorcement of jobbers is a clean cut way to correct abusive anticompetitive marketing practices of jobbers, the Service Station Dealers of America are only seeking relief that will preserve competition in the marketing of gasoline. Divorcement and open supply may solve and/or correct the anticompetitive marketing practices which some jobbers are engaged in.

The Congress will decide, not the Service Station Dealers of America, if at some point in the future jobbers should be divorced from retailing because they have not corrected their abusive practices and because no other acceptable solution has been found.

Jobbers have publicly admitted that there are abuses. Jobbers have publicly offered alternative proposals to correct those abuses. Jobbers know that they are destroying dealers who must purchase products from them and must pay whatever price they choose to charge. Open supply could provide the appropriate competitive element that would cause jobbers to cease engaging in anticompetitive marketing practices and thereby remove any possibility of future legislation of any sort.

28. Q. **WHAT AUTHORITIES HAVE EXAMINED RETAIL MARKETING PRACTICES AND HAVE EXPRESSED FINDINGS THAT SUPPORT THE CONCEPT TO CORRECT THESE ANTI-COMPETITIVE PRACTICES THAT DENY DEALERS THE BASIC FAIRNESS INTENDED BY THE PROPOSED DIVORCEMENT AND OPEN SUPPLY LEGISLATION?**

A. Partial answer includes:
(1) "FTC Report on Anti-competitive Practices In The Marketing of Gasoline" (1965 Hearings), June 30, 1967;
(2) "House Small Business Committee on Problems of Small Retail Petroleum Marketers," October 20, 1976;

(3) "Petroleum Marketing Practices Act of 1978," Title III, Requirements for Study and Intended emergency relief;

(4) D.O.E., Office of Competition's Trend in Company Stores, December 1979;

(5) "House Small Business Subcommittee on Antitrust and Restraint of Trade Activities Affecting Small Business," transcript of 8 hearings on Gasoline Marketing Practices, 1979;

(6) House Small Business Committee Report 96-1068, June 3, 1980, filed after hearings and investigation of petroleum industry practices by Subcommittee on Energy, Environment, Safety and Research;

(7) "Big Oil: A Citizen's Factbook on The Major Oil Companies," Center for Science In The Public Interest, 1973; 1974;

(8) Allvine/Houston/Phillips, "The Case for Legislative Relief From The Impending Destruction Of Small Business And Competition In The Gasoline Industry." Georgia Association of Petroleum Retailers, January 22, 1980;

(9) D.O.E., Office of Competition, Part I, Title III Report, May 1980 and J.W. Wilson & Associates, Inc. Economic Counsel, Washington, D.C., "Report On Part I The State Of Competition in Gasoline Marketing; The Effect of Refiner Operations at Retail," September, 1980; and transcript of all related Hearings.

(10) Small Business Administration's contracted Final Report from the Institute of Public Administration, Washington, D.C., "An Analysis of The Department of Energy's Fuel Allocation Plan and Related Policies," particularly pages 110-117 and especially page 115, 3rd paragraph and 1st sentence on page 116, June 1980: recommending divorcement of refiners and jobbers from retailing.

(11) Testimony on legislation by the National Small Business Association;

(12) Testimony on legislation by the National Federation of Independent Business;

(13) White House Conference on Small Business, 1980;

(14) American Petroleum Institute, testimony by Mr. Paul D. Collier before U.S. Senator Howard

Metzenbaum's Subcommittee, openly admitted the retail marketing system *as it was designed by refiners and as it exists today* is a disadvantage to the independent branded dealer stations. The admission by the representative of API is significant in that it succinctly identifies the problem. The problem is that independent service station dealers are being squeezed out of business.

(15) The Office of Advocacy, Small Business Administration, in testimony on the 1980 divorcement/anti-competitive pricing legislation said: "If we choose at this moment between no legislation and 'imperfect' legislation which does not have the equally enthusiastic support of all small business elements in this industry, it is far more important to have even the 'imperfect' legislation. We can all work to perfect it as soon as Congress reconvenes. *But the longer we go without even imperfect legislation, the fewer small businesses there will be to participate in the perfecting process."*

(16) Federal Trade Commission -- According to *The Oil Daily* (November 4, 1980): Complaint filed against eight refiners (Exxon, Texaco, Gulf, Mobil, Standard Oil of California, Standard Oil of Indiana, Arco, Shell) November, 1980 charges the refiners have individually and collectively:

> "have restrained trade and maintained and reinforced a non-competitive market structure in the refining of crude oil into petroleum products.
>
> "To this end, respondents (the oil companies) engaged in a common course of conduct that restrained trade and commerce at every functional level of the petroleum industry."

The Oil Daily further said the complaint charged that the companies violated antitrust laws by using their leverage over refining and marketing sectors of the industry ... and that it is expected resolutions of the complaint will take into the 1990's.

Mr. **Bedell.** Thank you, Mr. Houston.

Mr. Molnar, who is going to present the testimony for you folks?

Mr. **Kulik.** If I may, Mr Chairman, I would like to take Mr. Wesley's place on the time schedule and present very briefly a report that I think the Committee will be interested in.

Mr. **Bedell.** All right.

TESTIMONY OF JOHN KULIK, GOVERNMENT AFFAIRS REPRESENTATIVE, PENNSYLVANIA AND DELAWARE SERVICE STATION DEALERS ASSOCIATION

Mr. **Kulik.** I am John Kulik, Government affairs representative for the Pennsylvania and Delaware Service Station Dealers Association, which is comprised of approximately 3,000 dealers in the two States. To my left is Rudy Molnar, president of the association, who is an Arco dealer from Pittsburgh.

On behalf of the association, I thank the chairman and members of the subcommittee for this opportunity to discuss the trends in gasoline marketing now prevalent in Pennsylvania. For the past year, service station dealers in Pennsylvania have been involved in an intensive legislative effort aimed at the enactment of divorcement legislation in the State. In response to that effort, the Governor's Energy Council, which is chaired by the Lieutenant Governor, and is a part of the administrative arm of the Pennsylvania Government, conducted a study of the gasoline market in the Commonwealth between May and September of this year. Released on September 27, 1982, the study was the result of dozens of interviews with lessee dealers across the State, as well as consultation with the oil companies doing business in that marketplace.

I offer this report, which is entitled "Gasoline Marketing: Trends and Choices," to the subcommittee and would ask that it be read into the record as part of my statement.

Mr. **Bedell.** Without objection, that will be done.

Mr. **Kulik.** Thank you.

[For the report, "Gasoline Marketing: Trends and Choices," referred to above see appendix C.]

Mr. **Kulik.** This is a capsulization of the market trends which are causing lessee dealers in Pennsylvania grave concern about the future of their livelihood, and which has sparked public debate as to the future course of gasoline marketing in the State.

I stress at this point that my statement does not reflect the opinions or policies of the Governor's Energy Council or any other governmental body in Pennsylvania. I also do not feel qualified to answer questions concerning the methodology employed by the Governor's Energy Council in arriving at the conclusions outlined in this report. I would like, however, to briefly discuss several points of the report which impact directly on lessee service station dealers. According to the study, lessee dealers experienced a 29 percent decline in market share in Pennsylvania from 1972 to 1980. In the same period, company operations increased in the market share by 65.8 percent.

In terms of the actual number of stations, lessee dealers decreased in number in Pennsylvania from 10,439 in 1972 to 5,316 in the 8-year period. Thus, over 50 percent of the independent dealers went out of business in this timeframe.

The Governor's Energy Council would not conclude as to the precise reasons for these trends. They let the conclusions up to the legislature in this case. But it did reveal a number of marketing practices which, according to the report, "work to the disadvantage of the independent dealer." These include, "refiners selling gasoline at retail prices within 1 cent per gallon above—and in one case below—the wholesale prices they charged their dealers, refiner rebates for increasing sales volume, and large percentage increases in rent demanded at the time of rent renewal."

The report documented several cases of price squeezing of dealers by refiners. For instance, Texaco was cited as selling at approximately 6 cents below dealer tankwagon at a company station one block from a Texaco dealer near Harrisburg. Several other companies, including Sun, Arco, United Refinery and Gulf, were demonstrated to be marketing gasoline at company operations in direct competition with their own dealers at margins which put dealers in a position that make survival next to impossible.

The report also documents over 15 cases of rent increases imposed upon dealers at lease renewal ranging from 15 percent to 100 percent per year. This trend has had the effect of creating an artificially high overhead that has driven scores of dealers out of the marketplace this year alone.

This summer, in one small town, Shenandoah, Pa. Edward Bereschak, an Arco dealer, received a rent increase from $643 a month to $1,300 a month in the first year. Mr. Bereschak has recently quit the service station business, and it has been reported to us that Arco is now constructing a company operation in the place once occupied by this dealer. Mr. Molnar has more detailed information about the leasing situation and the situation in the Pennsylvania marketplace.

The GEC report concludes that there appears to be no laws, either Federal or State, that protect dealers from these practices of refiners in the present market. Although I understand that this is a hearing on marketing practices in general, I would wish to record our group's plea for protective legislation on the Federal level.

I think that sums up the statement, and my purpose was to introduce the report. Mr. Molnar again can answer any questions about the marketing in Pennsylvania.

Mr. **Bedell**. Thank you, Mr. Kulik.

Mr. Molnar.

TESTIMONY OF RUDY MOLNAR, PRESIDENT, PENNSYLVANIA AND DELAWARE SERVICE STATION DEALERS ASSOCIATION

Mr. **Molnar**. Thank you, Mr. Chairman, and thank you for inviting me today.

I am Rudy Molnar. I am an Arco dealer from Pittsburgh, Pa. I am also President of the Pennsylvania and Delaware Service Station Dealers Association, and have been in that position for 7 years.

I am 44 years old, and I have been in business 22 years. This is my 23d year of business, so I think I know a little bit about the retail end of the marketplace. I have been through the good times and I have been through the bad times. Mr. Chairman, this is the "pits." This is the bottom of the bad times. There is no way that a service station dealer can exist under the present marketing practices of the major oil companies.

The rent increases are just exorbitant. It is very difficult. We're going to take Gulf and Arco, right now the two biggest culprits in our marketplace in the Pittsburgh area. The average Arco dealer was paying between $750 and $1,000 a month prior to April 15, 1982, which is just 7 or 8 months ago. When Arco did away with the credit card, which was another financial blow to the independent service station dealer, they told the consumer that the prices would drop because they were doing away with the credit card. But they neglected to tell the consumer that the prices went up for that dealer's rent, anywhere from $300 to $500 to $600 a month, depending on the location.

They dropped the price, and raised the rent. So, in essence, the dealer was paying approximately the same amount of money, even though the consumer came in and expected to pay a lesser amount of money because there was no credit card.

Approximately 3 months ago we were told that as of November 1, that rental would go from $1,300 on a 3-bay station to $1,900. I asked them what justification they had and they told me, "We don't need a justification. You pay it." The rumors are that it is going to go up again to $2,300, and it is going to end up somewhere around $3,000. Now there is no way that an independent service station dealer can stay in business.

To refresh your memory a little bit, in 1972, before the shortage, a dealer paid approximately $2,400 for a load of gasoline. He sold it, the regular gas, for 38.9 cents a gallon in our area. He paid 30.7 cents. The company had admitted you needed 7 cents to operate in those days. I don't have to tell you how much prices have gone up since 1972. We paid $2,400 for a load of gas, and we made $640 profit out of it.

We now have an Arco district manager and a supervisor with a salesman telling a dealer he should sell his gasoline at cost. It was taped, and we have it on tape. It costs now to be competitive. Mr. Chairman, competitive to whom? Am I supposed to be competitive with Atlantic Richfield Co., who operates a company operation near me, that has millions and millions of dollars, that probably doesn't pay rent at that location, that they're gouging every dealer in Pittsburgh and in Pennsylvania now?

Am I supposed to be competitive with the Gulf Oil Corp. operation that sells their gasoline for a penny over the Gulf dealer's tankwagon price? Who is my competition? What is fair competition any more? What is free enterprise? Is it free enterprise to knock the other 5,200 independent dealers out in Pennsylvania? Is that free enterprise, when we each employ approximately eight employees, and then when we're gone, to say what happened to the independent dealers? Or are we going to worry about it now?

This committee has a lot in its hands. The rents, are, impossible. Why should rents be that high? First of all, they say the market value of the property. How could you have the market value of a property when I'm a captive customer of Atlantic Richfield, the

Gulf dealer, the Exxon dealer, and the Mobil dealer. I must buy Atlantic Richfield gasoline. No matter if it's a cheaper price from another brand or not, I'm a captive customer. So if I have to sell their product, why should I pay them top dollar for rent? Why all of a sudden must I pay top dollar unless they want to get rid of me.

Do they want to get rid of me? You'd better believe they want to get rid of me, because they want to put an am/pm mini market there, because that's where they make their money now. If this committee has any questions on the am/pm mini market that Arco runs, I'll be very happy to answer them after my testimony and show you why it is much more profitable to operate that way than as a full service station like I have.

What is a reasonable rent for a service station that is required to sell one brand of products? Was it reasonable 10 years ago? Was it reasonable 5 years ago? Or, is it going to be reasonable next year or the year after?

I want to put into the testimony a case with Exxon in Pennsylvania where they offered a dealer a drop of $950 a month in his rent. They would cut it in half if he would sell gasoline for a penny over cost.

Now, I'm not a lawyer, but I think it entirely illegal to use that as a leverage. They can't be over $1,000 because then they have to get the regional office in, so they have to keep it under $1,000 raise. Is it a fair rental for Gulf to tell their dealers in Pittsburgh that they have 515 locations in the region, and within 3 years they're going to have 115 locations:

> Unless you double your gallonage in the next 3 years, you won't be here because we're going to do away with you. Don't think any laws are going to protect you, because we're going to make it so economically impossible for you to survive that you can't survive in the marketplace and you won't be here.

Here is a Gulf lease which I would like to give to the committee. I would like somebody to read this new Gulf lease. Hitler wasn't as bad during his worst as this new Gulf lease is, believe me. I can't find it in here yet, but I bet there's a spot in there that tells him how many times he can go to the bathroom.

I would like to submit this into the testimony and have it read. It is Gulf's new lease.

Mr. Bedell. Without objection, we will enter it in the record.

Mr. Molnar. Thank you very much.

[For the sample service station lease, dealer contract of sale, commodity schedule, rental schedule, and automotive fuel agreement, referred to above, see appendix D.]

Mr. Molnar. It is a shame when a dealer has to double his gallonage in the next 3 years as a blackmail to stay in a marketplace that has declined 20 percent in 2 years. How in God's name, when he is paying top rent, is he supposed to double his gallonage, or be out? Now, this isn't just one instance. I got five calls in the last 2 months on Gulf's new rental policy starting January 1, 1983. This is the brand new lease which they gave us a copy, and very proudly they say "You read it because this is what you're going to abide by."

Gentlemen, I am here to tell you that the service station dealers of America, and especially in Pennsylvania, cannot survive. We will be out of business very shortly unless we get some legislative help.

We are very proud people. I don't want something for nothing. I have worked all my life, and I want to continue working. But don't send me into a war with a BB gun. That's just what is happening right now. I can't compete in a marketplace unless I get some help.

Thank you very much for your time. I will be very happy to answer any questions you may have.

Mr. **Bedell**. Thank you very much, Mr. Molnar.

Mr. Hiler.

Mr. **Hiler**. Thank you, Mr. Chairman.

Mr. Houston, I have a technical question, because I am just trying to understand the chart that you have here. In Mr. Lundberg's pricing sheets that he has here—this is the Lundberg dealer buying price, the tank wagon, excluding all taxes, and rack report as of November 24, 1982. If you look there, the dealer tankwagon price in Atlanta for that date of November 24, 1982, under regular leaded gasoline, I think was 97.4 cents, wasn't it?

Mr. **Houston**. That is correct. The difference is, in order to accommodate a comparison to the invoice I attached, I left the State and Federal taxes included. If you subtract those taxes, which are approximately 11½ cents, then you will come closer to the figure which you see in Mr. Lundberg's report.

Mr. **Hiler**. Good. Thank you.

As to the four of you—and anyone can respond—why do the majors, which I think you're all basically referring to the majors, why do the majors want to eliminate the service station dealers?

Mr. **Molnar**. Could I answer that?

Mr. **Hiler**. Sure. It is directed at all four.

Mr. **Molnar**. I am associated with Atlantic Richfield, or Arco, so it is very easy for me to compare Arco. I am not picking on Arco because they're all in this together. They're all a bunch of hoodlums in my opinion, and that's my opinion.

Atlantic Richfield has come out with a new gimmick, to sell food with their gasoline. It's called am/pm mini market. If I want to turn my station into an am/pm mini market, they will put $100,000 at my location tomorrow. They already told me. If I don't want an am/pm mini market and operate like I do right now, where I take care of the consumers' needs, they won't spend a penny unless something is absolutely falling apart.

When their am/pm mini market idea came along, they tried to get dealers to go along with this. Many dealers have, and many dealers have gone down the tube, as we say in the books, because they can't compete with the prices that are being charged.

Let me elaborate here on rent. We think our service station rents are high. They want to end up operating all the company stations. I'm talking about running all Arco stations am/pm mini market because that's all they want right now, for one simple reason. If they finally get a dealer to go into a location, he must use their computer system, and every product which is sold to that am/pm mini market, goes through their computer.

Now, they charge the dealer, if he is willing to operate 24 hours a day, 7 days a week, only 11 percent off the top for the privilege of using am/pm mini market. That means if the dealer does a $1,000 worth of business, he pays a $110 franchise fee. On top of that he pays a penny a gallon for every gallon of gas he sells. So, in essence, they are getting both ends. They are getting the food market and they are getting the gasoline market. The average dealer around our area pays approximately $5,000 a month rental fee and franchise fee for the am/pm mini market.

Now, if that dealer isn't willing to go along with the 24 hours a day, then the franchise fee is upped from 11 percent to 14 percent. Their idea is to give away the bread, the milk and the gas at just about cost, because people watch the price of bread, milk and gas, and they "give it" to the consumer on everything else. Gentlemen, you look at those places and they really gouge you on everything else. It is 10 to 20 percent higher to pay the franchise fee, which goes right to Atlantic Richfield. They will give the dealer this if they can get this much money out of him, but they can't survive in the marketplace, so more and more the companies are taking this over.

Now, I am not even sure that PMPA covers a franchise dealer with an am/pm mini market. In essence, what they are doing, if they go strictly am/pm mini market, and the dealers can't afford it, they will run them all.

They don't run them under Atlantic Richfield. I hope you understand this. They form another corporation so those people are under minimum wages, not union, not any retirement benefits like Atlantic Richfield would give their regular employees. They operate under a subsidiary called Prestige Locations.

[See appendix E for additional information.]

Mr. HILER. Let me ask a follow-up question to that point.

If the consumer is being gouged, why is he going to go back there?

Mr. MOLNAR. That's another thing. In Pittsburgh, we don't have any self-service. It is outlawed in the city of Pittsburgh, so you go into an am/pm mini market and you want $10 worth of gasoline, and you get your $10 worth of gas and hand him a $10 bill, he won't take it. You must get out of your car and go inside and pay for it, because they know that 1 out of every 3.1 people that walk into that store will buy something.

Mr. HILER. But, if I go into a store and I think I'm being gouged, I don't go back. I won't go buy my gas there if I think I'm being gouged.

Mr. MOLNAR. The gasoline is very competitive. Milk is very competitive, and bread is very competitive. But when you buy sour cream, do you know whether you should pay 29 cents or 36 cents or 40 cents? Most people don't. They know the price of milk, bread and gasoline in those places. That's what I'm telling you. The other prices are very high, and that's where they make their money.

Mr. HILER. I guess what I'm confused about is that I think we are giving the consumer credit for having an amazing amount of ignorance, which I don't think the consumers have. I mean, I think consumers are fairly price conscious today.

Mr. MOLNAR. If they were price conscious, they wouldn't deal at am/pm mini markets, sir. Believe me. Before you make a statement, I believe you ought to go visit a couple and check the prices; we already have.

Mr. **Hiler**. Well, I don't find consumers to be ignorant. Consumers are also voters, and I don't think voters are ignorant. I think voters are voters, and people and consumers are very adept at being able to discern differences in the marketplace. I think we have one of the most efficient marketplace operations in the world, taking all considered, and even if we include this, the selling of gasoline, we have the most extensive, efficient marketing operation. I think that is because consumers basically are smart people. But the bottom line is, you asked the question what is competition and what is free enterprise.

Mr. **Molnar**. Yes, sir.

Mr. **Hiler**. I think that's a very good question. If I'm a consumer, I can go buy my gas somewhere cheaper than someplace else. There is no predatory pricing taking place. I don't think anyone has made that accusation this morning. Then, isn't that free enterprise?

Mr. **Molnar**. It is free enterprise when a company is taking a loss at their station of $2,000, $3,000 or $4,000 a month being in competition with me and keeping my price artificially high? Do you call that free enterprise? That's not free enterprise, sir. Free enterprise is where everybody goes in with the same amount of knowledge about the business, when anybody can go into a free marketplace.

It is not free enterprise when they have a loss leader, when they sell and know they lose money every month at that location, just to keep the price artificially low. That is not free enterprise.

Mr. **Hiler**. Why would they do that?

Mr. **Houston**. If I may respond, I think it boils down to a simple statement, Mr. Hiler: Profit motive, control motive. There has been a decline in the amount of crude oil consumption and refined products through the system. Their future in that area appears to be on a decline now for a number of years. Rightfully, perhaps so, to some degree, they are reaching for other profits for their stockholders.

However, they are reaching it in a fashion which is anticompetitive. It is not what they are doing necessarily that we complain of; it is the system they are using to destroy us while they reach to get retailing. Predatory pricing is taking place by the very chart that I showed you. That is, they have a dealer tankwagon price. A large portion of the gasoline they sell to the consumer is at a price below that wholesale price charged that retailer. That has to be predatory to destroy the man who has to buy the product from them, and no one else.

When they add the other costs in, they are even substantially below and are, in fact, below in all three grades of the products. They are below the actual cost they imposed on the retailers who have to buy from them. So, look at the practice rather than the fact that they have simply embarked upon a project to take some retailing, that, per se, may not be so bad, to go into some retailing. It is what they are doing that is destroying the free enterprise system, and the competition which exists in the market. Once we are destroyed, I think the European story as told in the committee report in 1976 or 1977 clearly illustrates what this Nation faces:

Higher gasoline prices. The consumer is going to pay for it. There's your profit motive.

The control motive, the companies have lost to some degree and are losing their control over dealers by the ability to command and demand that they do certain things because of the passage of the Petroleum Marketing Practices Act. They have turned to other measures to evict dealers economically, through the rent increases, through the increase of costs like a surcharge on the credit card, through all of these other demands, and now the company store is down the street and not covering those costs they imposed on us, and they are doing that through a predatory act.

I deliberately did not use the word "predatory" this morning. The API report, Mr. Chairman, if I may refer back to the chairman here, clearly spells out and talks about they haven't done anything wrong. The fact is, they have done something wrong, and we need to look at that. The terminology of report 26 by the API is a challenge of words, whether they are engaging in predatory practices, whether they are doing certain things as defined in a single term word or two or three words. I say push aside all the fancy names that have been assigned to this, including predatory pricing, and look at the gut issue of what is happening to this industry. We are being destroyed through a system which is anticompetitive. If that is a true statement, then this Congress ought to do something about it.

Mr. RASHEED. Mr. Chairman, I just wanted to make one very brief response to the first question of Mr. Hiler: Why do they want to push dealers out of the market?

I think it all centers around the profitability of gasoline, and the oil companies preoccupation with gasoline sales. The only reason they really need dealers is when their service stations provide service. Now, what we are seeing is the dealer being replaced by a gasoline supermarket, where you go in and pump your own gas, you pay for it, and there is 1 person in that little cubicle, not 10 people but 1. They offer no service; they give you nothing. In fact, the original "gas and go," we had a nickname for it when it came to Maryland. It was called "gas and go to hell," because people would come in and if your car happened to stop in the station, they would call a tow truck and have you towed out, and put in the street.

Mr. HILER. If I may interrupt for just a minute, why do consumers go there, then?

Mr. RASHEED. Well, I think there was a need for self service, or some type of cheaper gasoline. I think it is very obvious that if prices are cheaper you're going to go to a cheaper place, but people also need service. Today the remaining stations which still have service, have their bays generally full. They can't handle the service because the demand for service is great. People in my neighborhood where I trade, make appointments if you want your car taken care of at a service station. Their service is very good, their mechanics are very good. The demand for services is also very high. The average age of an automobile, incidentally, has gone up from 4.6 years, I think. It will soon be 7 years. That is one of the reasons why we need service, but the oil companies figure they make more profit off of gasoline and that's the pivotal point. It is gasoline instead of service.

Mr. HILER. Mr. Molnar, you had your hand up.

Mr. MOLNAR. I just want to make one point clear: I don't expect the consumer to pay more money dealing with a full service station. What I am saying is, if a company location can sell gasoline for what I am paying for it, or a penny above, or 3 cents lower, like it was shown in testimony today, then if he is subsidizing that station by $3,000 or $4,000 dollars a month, I believe that the tankwagon price that I pay, which is kept artificially high, should be brought down to where my customers also can benefit, and I can make a profit also on my gasoline.

We're not saying that the consumer should come in, and pay more money at our locations. We are saying that if they can sell gasoline for what they are selling me wholesale, when I have to buy 8,500 gallons at a time, and the average consumer when he comes in buys 6.2 gallons, that they can't possibly sell it at 6.2 gallons for the same price that they charge me to drop 8,500 gallons in a ½ hour. Somewhere along the line there has to be a profit margin built in for their station. If they aren't, they are being subsidized, and if they're being subsidized, I think this is wrong, because that isn't free enterprise. If it cost them 10 cents a gallon to operate that station, I believe I should get my gasoline 10 cents a gallon cheaper than they are selling it there or charging me.

That's the point I'm trying to make. We don't want our consumers to pay more for gas. We want to get the better price. That's why these rent increases are so out of line. We have to pay the top dollar for the gasoline product at the so-called wholesale level, but yet they want the top dollar on the rent, too. We're getting it both ways.

Mr. HOUSTON. Just a quick response. It wouldn't be so bad to have the company stations in the marketplace. In fact, we had them before all the complaints started about the practices. We have had some company-operated stations throughout the 27 years I have been representing retailers in Georgia. We didn't complain in the earlier days about those stations, except for a certain type of infringement on a select dealer group in the market, because they were covering the cost of gasoline and covering the cost of operating the retail station.

It is that change in policy and that change in practice to now undermine the very system which they lock the independent dealer into, and to sell below him that is at question. The only way we know how to stop the problem or create a solution to the problem is, in fact, divorcement. We found no other better solution. We would support any solution which would correct the abuse of the companies' right. As the example I cited of the $1.22 cost, they impose the cost, the tankwagon price, the rent, the surcharge, and the hourly contract rate for labor, and they know that is cost. If they would sell at $1.22, my dealer might survive because it is that 10 cents a gallon and 15 cents a gallon down the street of the same brand product which causes that customer to go to the company-operated station and buy the same product, instead of going to an independent dealer and matching the services and quality of the services he gets.

Mr. HILER. Mr. Chairman, if I can beg your indulgence for just one more question.

How about what Mr. Lundberg recommended, that it might be a good idea to allow the majors to get together, which currently would be a violation of antitrust laws, to get together for the purposes of exchanging information relative to how to solve some of the marketing problems which exist or may exist in the distribution of petroleum products today, in the full view of the press and the public and everything else? What do you think of that idea?

Mr. HOUSTON. Mr. Hiler, I apologize. I wasn't in the room when that statement was made. I was up flying around for 45 minutes, waiting for the weather to clear.

Mr. HILER. I know the feeling.

Mr. HOUSTON. The answer to your question is, to legalize that which is in process today, in my opinion, the companies do, through various means, communicate with each other, to legalize it, to sit at a conference table, I think would further damage the free enterprise system of gasoline marketing in this country. I personally would be opposed to it. I think there is a better solution than opening a Pandora's box for a mutual concerted effort to destroy everything in this country.

Mr. HILER. Let me read the paragraph because I want to make sure I have presented it accurately:

> The oil companies, due to national antitrust policy, are unable to meet with one another to deal with rural area vulnerability to possible supply disruptions. In the same way, they cannot parcel out to one another the Nation's remaining independent jobbers who are so often left to cope with logistics problems. The President of the United States could easily bring about a temporary suspension of the antitrust laws so as to permit a national conference of the entire petroleum products distribution system. Such a conclave, attended by all interested elements of Government and the media, could bring to light present problems that result mostly from inhibited communications. It might also bring to light new thinking to cope with the present intensive evolutionary forces. It would certainly bring to light the basic good will and individual and corporate responsibility that I think are growingly characteristic of the whole oil industry.

You would be opposed to that?

Mr. HOUSTON. I would be opposed. Basically, that statement, if I heard it right, dealt with supply disruptions in rural areas and the need for communication in order to continue to supply properly the product during times of, let's say, short supply or other problems, which maybe there is some justification to sit and talk about those things which would help the industry spread the gasoline where it needs to go at a time of crucial need.

But for the commonly accepted convenience of sitting down to decide, as one group around the table, who can control this country, control this country's gasoline distribution, I would be opposed to it. I think the free enterprise system ought to work. It ought to work in the oil companies and it ought to work at retail. We are saying it is not working at retail and we want it corrected.

Mr. RASHEED. If I may just say one thing to that, I think that any competition that we have between the majors today is a very precious thing in this market. It is one of the most valuable things we have. Any risk of destroying or eliminating any of that competition would be something which I would shy away from.

For example, Shell recently decided it wouldn't charge for its credit card. That, to me, was one of the first examples of real competition at the wholesale level that we have seen. I think that was an excellent move for the consumer. I have a Shell credit card, and I never had one before. But I can buy my gasoline at the same low cash price, that the other people are advertising, but I use my credit card.

I think there is no need for what you are saying. For example, some of the things are already happening——

Mr. HILER. Correction. I didn't call for it. I am reading the testimony of Mr. Lundberg.

Mr. RASHEED. Let me cite another example. We have pullouts from various parts of the United States. Exxon has just announced a pullout from 850 stations in five States. I think we have in Ohio, Kentucky, upper New York, New Hampshire and Vermont 850 stations. Now, other companies have announced similar pullouts. They have been conducting these pullouts over the last few years. It appears to some people that perhaps they are acting in concert. I mean there is no justification for what I am saying, but it appears that the oil companies are pulling out of certain areas that are difficult for them to supply, and leaving them to their competitors while they go to another area where their competitor may be also willing to relinquish because their lines of supply may be a little bit longer. So either through concert or coincidence, they seem to be carving up the country——

Mr. HILER. Or market forces.

Mr. RASHEED. Or market forces, yes, but there is a movement and there does seem to be some movement in concert, and whether it is premeditated or not, I don't think I can say, but it is certainly happening.

Mr. HILER. Thank you. I yield back, Mr. Chairman.

Mr. BEDELL. Thank you, Mr. Hiler.

Mr. Rasheed, you indicated some problems with the proposed increase in the gasoline tax, with the way it operates. I need to understand how the whole thing operates. When a major has its own station and sells gas from its own company-operated station, then when does it pay the tax on the gasoline it sells?

Mr. RASHEED. On the Federal excise tax, the tax is paid at the refinery. The refinery pays the tax.

Mr. BEDELL. How often?

Mr. RASHEED. I believe it has to be paid within 10 days, I'm not positive, but there is a delay——

Mr. HOUSTON. Mr. Chairman, in the State of Georgia, I can tell you the way it is handled with regard to the retailer and the company station I think would have to fall in the same category, that the taxes are paid at the point of movement to the retail facility for sale to the ultimate consumer, and that liability is created at that point and within the time frame. I believe now there is a requirement for paying more than once every 30 days to take away the right to use the money for such a length of time, not only on State taxes but even Federal tax moneys. I believe that has been speeded up on the payment plans on it, so that your liability is created by the movement when it gets to the retail facilities. So I would presume that the company is in fact paying its Federal taxes and its State excise taxes on gasoline. The moment that it moves to their retail facility, the obligation and liability exists. It falls into the same category as those sales to their retail dealers, lessee and open dealers, in which that liability exists, and the dealer has prepaid the tax to the company and it goes back through the system in that manner.

Mr. **Bedell**. So that in reality, the major oil company that is operating its own retail outlet would be liable for the tax at the time it delivers the gasoline to that retail outlet, and would have to pay it at least within 30 days, or a somewhat lesser period?

Mr. **Houston**. Yes, sir. That is the procedure in the industry.

Mr. **Bedell**. I was trying to get at whether there was any great advantage to the company-operated store compared to the independent retailer. The only advantage would be the period of time. It would be less than 30 days advantage?

Mr. **Houston**. There is a disadvantage to the retailer, Mr. Chairman, in that the retailer is taking his money and prepaying to get the tax money back as he sells to the ultimate consumer, whereas the company's liability exists, but no money has changed hands. The liability may exist at the point of delivery, but I suspect that that money stays intact where it is until they are prepared to make that payment of tax. In the other instance, the dealer's money has left his hands upon the date of delivery, and for a period of 10 to 20 days he may be recovering it from the consumer. I think that's the difference.

Mr. **Bedell**. So if there is an advantage to the major, it would be no more than 30 days advantage in the use of the money. Is that correct?

Mr. **Houston**. That is correct.

Mr. **Rasheed**. I think the State tax is quite different from the Federal excise tax. The Federal excise tax I believe has to be paid by the refinery. The State tax in Maryland, for example, the jobber or anybody else—everyone except the dealer—has 30 days after the end of the month in which the sale is actually made, and that is 60 days that they have the use of 11 cents per gallon in Maryland. I think some of the other States are quite similar.

But the Federal excise tax I think is paid initially by the refinery, and that, of course, is passed on down. But the dealer has to pay both taxes at delivery, and he pays cash.

Mr. **Houston**. Mr. Chairman, may we submit a corrected statement then, because there's a difference of opinion here.

Mr. **Bedell**. Yes, since you don't agree. I presume maybe the majors tomorrow may have the answer to that question. The thing I think we should look at is we are likely to pass a change in the gasoline tax in the Congress.

Mr. **Rasheed**. I've heard some rumors.

Mr. **Bedell**. And if we do, I think it is important, before we pass it, that we know what problems there might be——

Mr. **Houston**. There are several major problems.

Mr. **Bedell**. In the way the tax is administered. I presume we would sure want to know what those problems might be.

Mr. **Houston**. One has to do with the gasohol exception that we have, which under the present language just exempts the Federal excise tax, which is 4 cents. If you change the 4 cents to 9 cents, then it has given an unfair advantage to gasohol dealers and you may bring gasohol back in rather speedily because it would, in fact, create some problems on that. There are other issues which are involved, which would be very damaging also to the retail dealers.

Mr. BEDELL. Mr. Houston, you indicated quite clearly the situation in Atlanta in regard to the Texaco situation. I understand Texaco will be with us tomorrow and we can check in that regard.

Do you know whether this is unique to Atlanta, or whether it is a bigger problem in Atlanta than other places, or whether——

Mr. HOUSTON. Mr. Chairman, I would like to introduce for the record and hand you copies which I have had made here for members of the committee a story which appeared in the July 1982 National Petroleum News, which is entitled, "Texaco Quietly Building a Forceful Chain of High-Volume Super Pumpers." It pretty well explains and confirms the things that I found and reported to you in this statement today.

[The article referred to above follows:]

C-STORES

Texaco Quietly Building a Forceful Chain of High-Volume Super Pumpers

Although Texaco appears to be pinning some of its future retail profit hopes on convenience stores, the company's exact direction remains unclear.

Texaco currently is pursuing two major programs—one involving the construction of high-volume super pumpers and the other a combined test with the Southland Corp.'s 7-Eleven convenience store chain.

Several of the high-volume super pumpers are in operation in the Atlanta, Fort Worth and Houston areas. The Southland test is being conducted in Amarillo, Tex.

The Amarillo test, especially, has created friction among Texaco dealers but Ellis Gunnels, the company's marketing vice president, refuses to comment about this or other aspects of the programs.

Texaco's most publicized moves have been the construction of modern super pumpers which feature C-stores and or carwashes and the company's new red, white, black and gray logo. The first units opened last fall in Houston and are said to cost about $500,000 to build. Some 54 of the new pumpers have been constructed. They are projected to move more than 100,000 gal. a month. But one unit in Houston reportedly is selling over 200,000 gal. a month.

By Bonnie J. Davis
Merchandising Editor

The direct-supplied outlets are composed of separate prefabricated modules for the C-stores, carwash and gasoline facilities, and can be installed within a short period of time. The C-store modules are small, either 384 or 468 sq. ft. The stores are stocked with fast-moving items only, including snacks, soft drinks, cigarettes and beer.

Dispensers at the high-volume outlets are labeled with generic names: Texaco's trademarked names, "Fire Chief" and "Sky Chief," are no longer evident. According to the company's publication, *Texaco Marketer*, the switch to "regular," "diesel," "lead free" and "super lead free" designations was made to help the self-service customer identify his choice quickly.

In 1980, prior to modernization, Texaco had been testing high-volume, pumper/C-store combinations under the name of "Texamart" in the Atlanta area. There are 21 of these Texamarts with another eight scheduled to open in Atlanta this year. The name Texamart is being dropped as each outlet adopts the company's new logo and colors.

A Texaco spokesman in Atlanta says these outlets are operating "right on target, what was projected," but he will not reveal any figures.

Texaco is not nearly as public about its ongoing test with Southland, the country's No. 1 convenience store chain. The test, which began last January, involves one 7-Eleven store in Amarillo. It is supplied with Texaco product, flies the company's flag and accepts Texaco credit cards for all purchases.

According to one Amarillo jobber, the convenience store buys product from Texaco at 2¢ below the dealer tankwagon price and must comply with the company's credit card rules. Since the combined operation began, he says, it has been rumored that if the test were a success, it would be expanded.

Several Texaco dealers were being pressured by the major's sales representatives, according to area jobbers, into signing mutual cancellation agreements. These supposedly would enable the company to lease stations to Southland. It was said that dealers faced nonrenewal of their leases if they did not agree to sign.

Citing the Petroleum Marketing Practices Act, the angry dealers reportedly refused to sign. One jobber commented that things have quieted down considerably since the initial furor, while attorneys for Southland and Texaco continue to work out the details. NN

Texaco is said to be investing about $500,000 per unit in such pumper/C-store/carwash combinations as this one. Dispensers carry generic names and color codes for fuels.

Food Mart
irty?
Ice? Beer
Cigarette
Regular
Car Wash

Photos Courtesy of Texaco

Mr. **Bedell**. In Atlanta, is the gasoline that is sold at dealer tankwagon price, is that handled generally by independent jobbers?

Mr. **Houston**. No, sir. This is direct by Texaco itself. Now, we do have independent jobbers doing likewise, but what I am reporting to you now in this statement today has to do with direct Texaco-operated stations through the process of hourly contract employees or commission paid, as I have explained in the statement. For the chairman's information, the Atlanta citation here is not the only place Texaco is engaging in this. The story here confirms that the Fort Worth and Houston areas are also involved in it, and that Texaco has some—it is quoted here—has some 54 of the new pumpers in place, and are building more.

Mr. **Bedell**. I don't exactly understand the credit card situation as it relates to company-operated stations as compared to independent dealers. Independent dealers are having to pay a credit card charge.

Mr. **Houston**. Yes, sir. May I explain that?

The credit card charge is what Texaco says in its printed materials is a cost they are seeking reimbursement from and are recovering from dealers by the process of a 3 percent charge on credit card sales, that they incur when a consumer uses a credit card. So that is a real hard and fast cost on Texaco at its company stations when they make a sale to the consumer. Yet their prices at the pump do not reflect that they have included a cost of 2 cents average, or individually 4 cents a gallon, for the use of the credit card, if you just apply it to those who are buying on credit.

The cost factors are there. Their prices indicate they are not covering that cost which they imposed upon the dealer. The cost is related to something which the dealer has nothing to do with: The cost of credit for consumers. If the cost is real, and Texaco is correct in its statements, that they are recovering a cost which they are incurring because of the use of credit cards, then they have a cost of 2 cents a gallon or more.

Mr. **Bedell**. In some stations I have been in you get a discount for cash, which is a charge for a credit card.

Mr. **Rasheed**. We have some arguments about that, too, Mr. Chairman.

Mr. **Bedell**. But there is a difference in price whether you pay cash or credit card in many stations to the customer?

Mr. **Houston**. That is correct.

Mr. **Bedell**. Is that true in the company-operated pumpers as well?

Mr. **Houston**. Texaco does not offer the cash discount at any of the pumpers anywhere, to my knowledge.

Mr. **Bedell**. Do you know about in Pennsylvania, Mr. Molnar?

Mr. **Molnar**. Not Texaco.

Mr. **Bedell**. Do the other majors, in their company-operated superpumpers, do they have a discount for cash?

Mr. **Molnar**. Yes, they do.

Mr. **Bedell**. Texaco does not. But does Texaco charge its dealers a credit card charge?

Mr. **Houston**. Yes, sir.

Mr. **Bedell**. But they do not give a differential at the company-operated station?

Mr. **Houston**. I think competition, as two other companies I think just recently announced that they have started the cash discount. I think others will be forced to competitively offer that same discount.

But, Mr. Chairman, I caution you that you should examine what happened to the wholesale prices and the printed company statements when they were talking about offering cash discounts. They suggested and recommended to the dealers that they raise the retail price in order to offer that discount. Is that a discount truly to the consumer, to raise the price and then give him some back?

Mr. **Bedell**. The Pennsylvania report found that some major brand suppliers have also established trading or pricing zones for their retail outlets. They said, "Our investigation did reveal a number of cases where zones were changed and where variable allowances could work to the advantage of one station over another in close geographic proximity."

I don't know if I understand the issue here.

Mr. **Molnar**. Mr. Chairman, I will try to help you on that one. We can go back to Atlantic Richfield on that one. I think they are the ones that have these zone rates now.

Mr. **Bedell**. What are zone rates? I need to know what that is.

Mr. **Molnar**. Well, zones are different areas they put into effect which would determine the wholesale price of gasoline. In other words, if a marketplace is depressed, they will give the dealer in that area a temporary voluntary allowance—a TVA we call it—of 1, 2, or 3 cents a gallon to compete in that area.

Now, if you want to know what an area is made up of, or what section, that's secret; nobody knows. They wouldn't release that to the Governor's Energy Council. What they are telling the Governor's Energy Council is that would give away their marketing strategy if they told what areas were getting a lower price.

So what I am trying to tell you, say in a county like Allegheny County, which is mostly comprised of Pittsburgh, you could have six different wholesale prices of gasoline within Arco. Now, the only thing that we have to say about that is, the dealers that play ball and sell gas at a lower price are sometimes put in a different marketing area or a price zone and get a lower price. In other words, Atlantic Richfield can punish you if you don't go along with their marketing practice.

Mr. **Bedell**. By changing their zone?

Mr. **Molnar**. Exactly; nobody knows where their zone starts or stops, so it would be very easy to change a zone, since nobody knows exactly where the Atlantic Richfield zone started and stopped. Now, the only way we know there are different zones is we call different dealers and maybe the dealer 10 miles away will get gasoline 3 cents a gallon cheaper than we do.

Mr. **Bedell**. At dealer tankwagon prices.

Mr. **Molnar**. At dealer tankwagon.

Mr. **Bedell**. Then why would the stations change the outline of their zones geographically to get other stations in or out of a zone?

Mr. **Rasheed**. Well, the oil company does that.

Mr. **Bedell**. That's what I mean.

Mr. **Rasheed**. They do that, as he said, to give favored treatment to certain dealers.

Mr. **Bedell.** Well, why would they want to give favored treatment to certain dealers?

Mr. **Molnar.** Because this dealer is pumping a lot of gas, because he is playing ball with the major oil companies. He is selling his gasoline at 1 or 2 cents over cost.

At one time, Mr. Chairman, right after the last crisis when they had the zones, myself and another dealer in our association—who is another board member of our dealers association—were the only members in one zone. We historically had a very high tankwagon price compared to the other dealers who went and played ball with Atlantic Richfield. That is on record.

Mr. **Rasheed.** I think, Mr. Chairman, that you will find, as we did in Maryland, that there were dealers across the street from each other who were in different zones, and they were of the same brand. One of the things the Maryland divorcement law was to eliminate was zone pricing so that the company must offer the same price to all of its dealers in the State.

Mr. **Houston.** Mr. Chairman, though we don't have it in Georgia yet, this is a return to the preembargo days of zone pricing. In the 1965 FTC hearings we argued this because we had massive zone pricing going on. In the City of Atlanta for the Shell Oil Co., I personally walked into one of their offices one day and they accidentally left on the wall a map which had 56 zones for the city of Atlanta. There were zones where there were two dealers, zones where there were four dealers, taking in large areas, small areas, for the accommodation of discriminating in price. That was our charge for that, and that is a return to a discrimination in price in the system and probably is an anticompetitive act under the antitrust laws. But trying to seek any redress there is absolutely out of the question.

Mr. **Bedell.** Do you have any more questions, Mr. Hiler?

Mr. **Hiler.** No.

Mr. **Bedell.** Mr. McDade?

Mr. **McDade.** No.

Mr. **Rasheed.** May I just complete an answer that I didn't make on the tax. You spoke of problems that we have with the tax. Gasohol, of course, was only one problem, and I'm not sure it is.

But anyway, the thing that we are really looking for is an amendment to reimburse dealers for the costs that they will incur when they collect that 9 cents a gallon tax on the credit card. We mentioned there is a 3-percent fee on the credit card. As I mentioned in my testimony, we have worked it out, the 3 percent credit card processing fee. When that is applied to the 9 cent a gallon tax, if we have a 100,000 gallon station, as most of them are in the Washington area, that would cost the dealer $1,600 a year if only half of his sales were on the credit card. Now, we are very concerned about that cost. I think dealers everywhere are concerned that to serve as an involuntary tax collector they are going to have to pay. A smaller station would pay $800, but the larger stations are going to pay much more, double that.

Mr. **Bedell.** Just a minute; I'm sorry to take the time here, Jack. When you buy your gas at wholesale, you then pay, as I understand it, the Federal tax on that gas.

Mr. Rasheed. That's correct. On an average tanker load, which is 8,000 gallons, it is $720.

Mr. Bedell. So you pay that for the gas that you get, and that's the same whether you sell that gas at cash or credit card, is it not?

Mr. Rasheed. Right.

Mr. Bedell. So you are going to pay the same amount of tax.

Mr. Rasheed. Correct.

Mr. Bedell. I don't understand how selling that by credit card, that the tax is going to affect you adversely.

Mr. Rasheed. Well, of course, the cost of the tax is included in the price of the gasoline. When you pay $1.30 a gallon for your gas, that will include 9 cents a gallon Federal tax, plus the State tax. In Maryland it is 11 cents. So you are going to pay a total of 20 cents a gallon in taxes. That is going to be put on the credit card as part of the credit card invoice, or the sale. The oil companies, when they receive the credit card, are going to charge the dealer 3 percent of whatever is on the invoice.

Mr. Bedell. So the problem is not what you have to pay in taxes. The problem is that you have to pay the company money, a percentage of the tax, is that the problem?

Mr. Rasheed. We would be paying them 3 percent of the total tax that we collect and charge on credit cards.

Mr. Bedell. If an amendment were to be offered, to say that the wholesaler could not charge a commission on the tax, would that——

Mr. Rasheed. You mean the oil company?

Mr. Bedell. No. If the Federal legislation said that the supplier would not charge a commission on the tax, would that solve that problem?

Mr. Rasheed. It would create another one, and that is, how do you separate the tax from the total sale if it is charged on a credit card? We believe the only way you can solve that problem is to have an amendment to give the dealer a tax collection allowance which would cover that cost. We are suggesting that perhaps 2 percent of the tax collected would be adequate to cover that.

Mr. Hiler. Excuse me. When you say tax collection allowance, from whom comes the allowance?

Mr. Rasheed. We would expect the allowance to be in the form of a rebate on the tax that the dealer collected. In other words, the dealer is going to collect on a tankload of gas $14.

Mr. Hiler. A rebate from whom?

Mr. Rasheed. I'm sorry, from the Federal Government.

Mr. Bedell. I don't see how that would change the discrepancy any. That would be the same as saying instead of increasing the tax 5 cents for example, you're going to increase it 4.8 cents and that's all you're saying you would change. I don't see where that would change the discrepancy

Mr. Rasheed. We are only seeking an allowance to cover the additional costs that we are going to incur for collecting that additional tax. We have another problem, and that is shrinkage. You know the product that is delivered to the dealer, and put in his storage tanks, after the dealer has paid the tax on it, is going to shrink.

Mr. BEDELL. I understand. But everybody has that problem, don't they?

Mr. RASHEED. But some States do make allowance for that.

Mr. BEDELL. Maybe. But really, all you're talking about is whether you're going to increase or lower the tax. It seems to me that's what you're talking about there.

It seems to me the other issue you have, however, if I understand it correctly—and I don't want to dwell on it too long—is that, in effect, if we do what you're saying, it is still going to be true that your supplier is going to collect a commission on the tax you pay.

Mr. RASHEED. That's correct.

Mr. BEDELL. I question whether he should, but you are not offering anything that would correct that, as I understand it. You're just simply saying we should lower the tax, but still let the supplier get a commission on the tax paid with credit cards.

Mr. RASHEED. Well, I don't have a solution as to how you would stop the supplier from charging, or how he is going to separate the tax.

Mr. BEDELL. Well, I think it's a legitimate problem, but I don't know what we could do about it.

Mr. HOUSTON. Mr. Chairman, I would hope the amendment would be placed on the bill. I would like to see it prohibit the assessment of a credit card surcharge or any other percentage applied to the taxes on——

Mr. BEDELL. Yes, but Mr. Rasheed thinks that might create some bookkeeping problems.

Mr. HOUSTON. Perhaps to the degree that the credit card surcharge falls. [Laughter.]

Mr. RASHEED. I think, on careful consideration, that your suggestion to prohibit the charge on the tax on the credit card is an excellent one, Mr. Chairman.

Mr. BEDELL. But you still don't know how it would work, isn't that right?

Mr. MOLNAR. Mr. Chairman, that could work very easily. If a station purchases 100,000 gallons at the end of the month, and historically he has a 50-percent credit card usage at his station, they could reimburse him for that 50 percent which was left, or 50,000 gallons.

Mr. BEDELL. Yes, I would not think that would be so difficult.

Mr. MOLNAR. It wouldn't be accurate to the penny, but it would be pretty doggone close and it wouldn't be a lot of bookkeeping.

Mr. BEDELL. We could ask the majors when they come before us tomorrow about that and see. I would not think that would be so difficult.

Mr. MOLNAR. Just to make one point clear—and I think my fellow panelists here have made the point, but I just have to reiterate—when I buy a load of gas from Atlantic Richfield, or any other dealer purchases it, he must pay in advance for this. Now, in the State of Pennsylvania we have a very high tax on gasoline. With this new 5 cent a gallon tax going in, you're talking about 22½ cents on a gallon of gas. On 8,500 gallons of gas, you're asking me then to give in advance—before I sell any product—over $2,000 of my money. That's another problem that the dealers have. If you put this tax in at 5 cents a gallon, you're asking me to take out another $425 out of my pocket, which I never see and is always in the ground.

Mr. HOUSTON. One last reference. Since it has been raised on the rebate idea, it is not so far fetched in that Georgia has had it on the books since 1949, a 2 percent of the first 5½-cent tax. It happened to be a 5½-cent tax rate in 1949, that is $11 on each 10,000 gallons to cover evaporation, spillage, and the cost of serving as a tax collector, having advanced the money as the product was delivered. There are other States which pay this. It is a legitimate cost factor which could be handled in the increased Federal tax.

I am not personally opposed to the increase in the Federal tax. I feel like we need good highways, and I am not speaking for it but I'm not opposing it. I am saying there ought to be some fairness or equity injected since we are forced to be the tax collector and there is a cost factor related to it.

Mr. BEDELL. Thank you very much. I'm sorry we have taken so long but I appreciate the panel being here.

Mr. RASHEED. Thank you, Mr. Chairman.

Mr. BEDELL. Our next panel will be a panel consisting of John Meintzer, of the National Association of Texaco Wholesalers; Mr. Richard Mase, president, National Arco Distributors, Inc., and Jack Findlay, president of the California Arco Distributors. Apparently each of you brought your legal counsel.

Mr. MCDADE. Mr. Chairman, I appreciate very much your yielding to me. I want to present one of the individuals on this panel, who I understand is not going to be a principal testifier but is a very, very close personal friend of mine and one of my fine constituents. His name is Pat Hickey and he is from my district. He has been in this business for many, many years. As long as I have known him he has always not only known the facts as they relate to him individually, but has had a broad understanding of the facts.

He has flown the Texaco brand flag I guess for about 15 years, and during the course of his business has serviced 50 to 60 stations and branched out as a successful small businessperson into 3 different States. So he has done well in his own business. He has been a leader in the community, needless to say, and perhaps most importantly to the committee, his peers have recognized him as a leader in their industry by making him past director of the Pennsylvania Petroleum Association and now chairman of the National Oil Jobbers Council in the Texaco Brand Committee. So, with all of that, he brings to us a broad national perspective of an industry in flux.

I am very proud to call Pat my friend and I take pleasure introducing him to the members of the committee. I think we can all learn from him despite the fact that he went to my alma mater, Notre Dame. So, Pat, we are glad to have you here.

Mr. Chairman and John, thank you for permitting me to introduce him.

Mr. HICKEY. Thank you, Mr. Congressman.

Mr. BEDELL. I thought we had three people and I count eight here. I think, because of the fact that we have run overtime here, I would ask that we try to hold it to 10 minutes for each of the three groups represented.

First of all we will hear from Mr. Meintzer, or whoever is with him, from the National Association of Texaco Wholesalers from Easton, Md.

PANEL CONSISTING OF JOHN E. MEINTZER, JR.; AND JACK R. FINDLAY

TESTIMONY OF JOHN E. MEINTZER, JR., MEMBER, EXECUTIVE COMMITTEE, NATIONAL ASSOCIATION OF TEXACO WHOLESALERS, INC., ACCOMPANIED BY J. PATRICK HICKEY, CHAIRMAN, NATIONAL OIL JOBBERS COUNCIL, TEXACO BRAND STEERING COMMITTEE; AND GREGG R. POTVIN, COUNSEL

Mr. MEINTZER. Good morning, Mr. Chairman, and members of the committee. I am Jack Meintzer, a Texaco wholesaler operating from Easton on the Eastern Shore of Maryland. My family has been marketing Texaco petroleum products in the State of Maryland since my father started our company in 1919. I have been associated with the firm since 1953 and became its president in 1972.

I am a member of the executive committee and a former president of the National Association of Texaco Wholesalers, on whose behalf I am testifying today. I am also the chairman-elect of the National Oil Jobbers Council Texaco Brand Steering Committee. With me is J. Patrick Hickey, who is the current chairman of the NOJC Texaco Brand Steering Committee, and also a member of the National Association of Texaco Wholesalers Executive Committee. Pat is a Texaco wholesaler in East Stroudsberg, Pa. Between the two of us, I believe we are aware of nearly all of the problems facing Texaco wholesalers in the United States. Also with me today is Gregg R. Potvin, our Washington counsel for NATW.

Mr. Chairman, Texaco wholesale distributors are extremely grateful for your concern for the small businessmen and women of this great Nation, and I want to take this opportunity to thank you for this opportunity to appear before this committee today. However, I am not overjoyed at the circumstances which have resulted in my being here: To illustrate how changes in Texaco marketing practices since decontrol have adversely affected our firm as well as other Texaco distributors.

It is particularly painful for me to sit here and air my complaints against a supplier with which my family and I have had a close relationship for over half a century. However, numerous recent attempts by other Texaco wholesalers and myself to resolve with Texaco management officials the issues I bring before you today have proved fruitless.

Since the committee members have copies of my prepared testimony, I will not read it, but rather highlight the key points in order to leave time for questions the members may have.

Mr. Chairman and committee members, no matter what may be said throughout these hearings, there is one fact that is clear to me: Gasoline is selling on the streets of my marketing area this morning—and if you will permit me, I just did a price survey in the marketing area. I don't know whether you want me to get into all these prices, but there is a great deal of material here. I think the bottom line is that street prices for direct-supplied stations are equal to or less than my buying price as a Texaco wholesaler.

These direct-supplied stations are able to market on the street at my buying prices or less. I have documentation, but I won't get into it today. If you want it, we would love to submit it later, if that is possible to do so.

[See appendix H.]

The problem is, if Texaco's direct-supply street prices are the same as my buying prices; how then do my retailers, who are in direct competition with their retailers, make a profit, as well as myself? That's the question. No matter what figures you hear today, that is the bottom line! How do my retailers, who are in direct competition with the direct-supplied retailers, make a profit?

In many areas of the country, Texaco is selling gasoline to their direct dealers at delivered prices equal to or below the price they are charging the wholesale distributor. They are doing this by granting their direct dealers rebates of up to 7½ cents a gallon. In its own company-operated stations, it is not uncommon for gasoline to be selling at the pump—in other words, the retail street price—below the price charged Texaco wholesale distributors. This is only one of the means Texaco and other major refiners are using to take over markets built up by their distributors and their retail dealers.

Since decontrol, Texaco has discontinued the allowance distributors were receiving to haul products from the Texaco terminals to their own bulk storage facilities. They have tightened credit terms and the effective lines of credit of distributors. They have levied a 3 percent surcharge on credit card sales, thus giving their company owned and operated service stations a price advantage. They also have restricted the amount of gasoline distributors may purchase while allowing direct-served dealers unlimited quantities.

We are also concerned that, because of the language contained in the 1981 Texaco Wholesale Marketer Agreement, it appears that Texaco can direct all gasoline to its company investment stations during a period of short supply. Texaco marketing officials have repeatedly stated that they want to reduce their market share of distributors and dealers. It is obvious that the tactics I have mentioned are directed at accomplishing this goal.

What is alarming, however, is that in doing so, they are eliminating a large segment of competition from the marketplace. Texaco wholesale distributors are being forced into bankruptcy or selling their businesses to pay off their debts. In many cases, this debt was incurred by distributors being required to buy antiquated bulk storage facilities and service station properties from Texaco as a prerequisite for staying in business. In other cases, the distributor's financial difficulties have been caused by them investing thousands of dollars to upgrade marketing facilities at the urging of Texaco. In fact, there are only a little over half as many Texaco wholesalers in business today as there were in 1975. In 1975, there were approximately 2,200 Texaco wholesalers; today there are approximately 1,100.

Some of these were eliminated as a result of Texaco withdrawing from complete market areas, but a large number have been forced out of business as a result of Texaco's predatory practices that I have mentioned.

The irony of all this is that Texaco's own 5-year marketing plan of 1977 through 1981 shows that marketing costs to Texaco were and are, far less for wholesale distributors than for any other class of trade. In fact, marketing costs were shown to be at least six times more per gallon for their own investment stations than for distributors.

Texaco marketing officials have openly admitted that their large superpumper investment stations do not show a profit on gasoline sales. Yet Texaco plans to build 100 of these superpumpers a year for the next 5 years.

In light of these facts, as a Texaco stockholder, I find Texaco's action to reduce or eliminate its wholesaler class of trade to be void of economic justification. However, as a Texaco distributor, I view these actions as an attempt by Texaco and other major refiners to monopolize gasoline marketing so that they can later price gasoline to the American public at unrealistically high prices.

I believe the record of the 1976 hearings by the forerunner of this subcommittee reflect that Exxon and other major oil companies did this very same thing in Europe in the late 1960's, when they eliminated the independent marketer from the scene. As a Texaco stockholder, I don't care to profit from this type of activity.

Mr. Chairman and committee members, petroleum wholesale distributors supported the decontrol of petroleum products and have generally been opposed to governmental intervention in the marketplace. All we want to do is be allowed to compete in the market on a fair and equitable basis. I would like to underline that is all we want to do. Let's all start from the same place and compete fairly. However, we are being driven from the marketplace as an element of competition, and we can no longer sit and watch major oil companies steal from us the markets and businesses we have built up over our lifetimes and the lifetimes of our families.

Another question I have is if jobbers like ourselves are forced from the marketplace—I live primarily in a rural area—are the majors themselves going to take up the slack and deliver to the farmers and the watermen where I come from? I doubt that seriously.

It is our contention that the actions of Texaco I have discussed here today, as well as similar actions by other major refiners, are contrary to the legislative intent of the Petroleum Marketing Practices Act, and particularly as it pertains to predatory practices of refiners which present a threat to competition. I hope that after hearing the testimony presented here today and tomorrow, this committee will act to preserve the degree of competition within the petroleum industry to which the American public is entitled.

Gentlemen, as it stands with these prices this morning, which I can document for you, if it is allowed to continue, it is the death sentence for me and my retailers.

Thank you. Mr. Hickey and I will be happy to respond to any questions the committee members have at this time.

[Mr. Meintzer's prepared statement follows:]

PREPARED STATEMENT OF JOHN E. MEINTZER, JR., MEMBER, EXECUTIVE COMMITTEE, NATIONAL ASSOCIATION OF TEXACO WHOLESALERS, INC.

I am John E. Meintzer, Jr., president of J. E. Meintzer & Sons, a wholesale petroleum distributor in Easton, Maryland. I assumed this position in 1972, after having been associated with firm since 1953. Our firm was started by my father in 1919 and we have been distributing Texaco products on a wholesale bases for the past 63 years.

I am a member of the Executive Committee and a former President of the National Association of Texaco Wholesalers (NATW), on whose behalf I am testifying today. The NATW membership consists of over 400 branded Texaco wholesalers from 46 states. In addition, a number of former Texaco wholesalers, marketers of other branded and unbranded petroleum products, and associates from allied business professions are NATW members. In 1981, NATW members distributed approximately 62 percent of the motor gasoline marketed by Texaco wholesale distributors in the United States. This represented about 37 percent of all motor gasoline marketed by Texaco in this country during that year. Therefore, NATW members consitute a significant segment of the national petroleum distribution system. I am also Chairman-Elect of the National Oil Jobbers Council (NOJC) Texaco Brand Steering Committee. I believe it is fair to say that my comments here today concerning my experiences are representative of just about all Texaco distributors.

Mr. Chairman, Texaco wholesale distributors are extremely grateful for your concern for the small businessmen and businesswomen of America and I appreciate this opportunity to meet with this Committee. My purpose for being here today is to illustrate how changes in Texaco's marketing practices since decontrol have affected my firm in particular and Texaco marketers in general.

I would first like to take a moment to give you a little background on our firm. We employ 20 people and distribute a complete line of petroleum products in the State of Maryland. A large portion of our business is the distribution of Texaco gasoline to approximately 40 service stations ranging in size from middle size "pumpers" to what is commonly known as "Ma and Pa" operations. Of these 40 locations, my company owns or leases 18; the balance of these stations are independently owned and operated dealer locations.

In 1973, our firm was required to purchase bulk storage facilities from Texaco in order to remain in business. Until 1978, we served as a consignee for Texaco products; that is, we delivered gasoline to our customers, strictly on a commission basis, from bulk storage facilities. Texaco retained title to the product until our customers took custody of it. In 1978, we became a full-fledged distributor whereby we started assuming all busines risks for product from the time we took possession at the Texaco terminal until the customer paid us. Since this conversion took place while we were under government controls, we were changed from 2.6 cents a gallon commission as a consignee to 5.1 cents a gallon authorized margin as a distributor; i.e., the difference between the price we paid for gasoline and the price we were allowed by the Department of Energy (DOE) to sell it to our retailers. At that time, the retailer was authorized, under DOE regulations, a margin of about 15 cents a gallon. Subsequently DOE increased the authorized margins to 8.6 cents a gallon for distributors and 17.7 cents a gallon for retailers.

During the period from 1975 about a year ago, several hundred other consignees also were converted to distributor status. Most of them were required to purchase bulk plant facilities and service station properties from Texaco as a prerequisite for conversion. During this period of conversion of consignees to distributors, Texaco charged its distributors 3.25 cent less for regular leaded gasoline than it charged its direct dealers. A similar discount was granted for other grades of gasoline. This "functional discount" was in recognition of the various functions performed by the distributor such as soliciting and servicing customer accounts, storage of product, delivery to retail, consumer, and commercial accounts, and responsibility for carrying the customer's credit—all of which require a considerable investment by the distributor. Distributors also received the following: (1) an allownace for hauling the product from the Texaco terminal to their bulk plants; (2) a 1-percent discount for payment within approximately 15 days from the date product was picked up at the terminal; and, (3) there was no charge for use of the Texaco credit card. In short, Texaco distributors could sell to their customers at competitive prices which would also allow their dealers to be competitive with Texaco's direct dealers and permit the distributors to service the debt they had incurred and earn a suitable return on the investments they had made in properties and equipment.

The following changes have occurred since decontrol: Texaco has (1) discontinued hauling allowances; (2) tightened the credit terms of distributors by decreasing the number of days from which product is picked up from the terminal until payment must be in the hands of Texaco; (3) started charging the distributor's line of credit at the time product is ordered and requiring the product to be ordered 24 hours or more in advance, thus decreasing the effective line of credit of distributors; and (4) levied a 3-percent surcharge on credit card transactions of its distributors and dealers. In addition, the historical difference between the price Texaco charges distributors and direct served dealers for gasoline (functional discount) has all but disappeared. In fact, direct served dealers often are able to purchase product below the wholesale price, due to special rebates afforded them by Texaco, and gasoline has been sold at retail in service stations owned and operated by Texaco for as much as 2 cents below the price charged wholesale distributors in the same marketing area. In many parts of the country, Texaco sales representatives are taking away commercial accounts of Texaco distributors by selling them gasoline and diesel fuel 2 cents to 5 cents below the wholesale price to distributors. Distributors are also restricted in the amount of gasoline they may purchase, while direct served dealers are allowed unlimited quantities. As a distributor, I have been refused Texaco product to supply part of the customer base that I acquired with the consent of Texaco because Texaco does not desire to have wholesale distributor competition in metropolitan markets.

Perhaps the most serious injustice since decontrol has been the"take-it-or-leave-it" Marketer Agreement forced on Texaco distributors in early 1981. In this nonnegotiable contract, Texaco imposes maximum and minimum volumes on distributors, with provisions for cancellation if minimums are not met. Yet Texaco controls the capability of the distributor to meet contract minimums through pricing tactics, availability of product, and restrictions on contract maximums. The inability of the Texaco distributor to control his own fate in this regard is made worse by the requirement that Texaco approve all new retail dealer accounts taken on by the distributor. We consider this to be an unwarranted restraint of trade. Other provisions of the Marketer Agreement purport to give Texaco the latitude to dispose of Texaco distributors on far less than equitable grounds despite the huge investments the distributors have in their businesses. (In many cases, investments in equipment and facilities which were purchased from Texaco as a prerequisite to a distributor supply contract.) In addition, in times of short supply, Texaco is not obligated to honor the Marketer Agreement and, because of language contained therein, could apparently direct all gasoline to its directly supplied investment stations.

The aforementioned marketing practices of Texaco lead one to ask why Texaco is acting in such an apparent irrational manner toward its wholesale distributors. To find the answer one must only look at Texaco's Five Year Marketing Plan (1977-81). In 1975, there were 2150 Texaco wholesalers (181 tanktruck dealers and peddlers—1005 consignees—964 distributors). Texaco's 5-year plan called for reducing the wholesale class of trade to 1500 by 1981, all of which would be classified as distributors; i.e., there would be no more commission-type arrangements. All wholesaler relationships would require investment in facilities and equipment. Were Texaco decided it wanted to market directly, wholesalers were to be terminated. When the Petroleum Marketing Practices Act (PMPA) became law in 1978, it became evident that it would be difficult for Texaco to carry through with its Five Year Plan without violating the provisions of the Act as it pertains to termination and non-renewal of franchises. In my opinion, Texaco's answer to this dilemma was to implement the policies I have mentioned to drive its wholesalers out of business. These attempts to circumvent the provisions of the PMPA, as it pertains to termination and non-renewal of a franchise, apparently have succeeded. In fact there are only about 1100-1200 Texaco wholesalers in business today as compared with 2150 in 1975. Those of us who have survived this one-way relationship are extremely apprehensive about our future as Texaco wholesalers.

As a Texaco stockholder who has examined Texaco's Five Year Marketing Plan, I am even further perplexed by Texaco's efforts at eliminating its wholesale class of trade. Page six of that Plan clearly indicates that marketing costs per gallon for Texaco motor gasoline in 1975 were six times higher for Texaco's investment stations as they were for gasoline marketed by distributors (7.63 cents vs. 1.23 cents); four times as high for independent direct retailers (5.16 cents vs. 1.23 cents); and almost three times as high for direct consumer sales (3.18 cents vs. 1.23 cents). In other words, marketing costs per gallon for motor gasoline sold through distributors were far less than for any other means of distribution. According to projected cost reductions outlined in the Plan, distributor marketing costs per gallon in 1981 would remain approximately four to six times less than for any other means of distribution (Investment stations: 4.63 cents—Independent Direct Retailers: 3.66 cents—Distributors: .73 cents—Consumer sales: 2.68 cents). It should be noted that since Texaco began assessing a 3-percent surcharge on credit card sales, an average of 1.2 cents a gallon is being recouped from distributors. Therefore, we believe that the differential between marketing costs to Texaco for their investment stations and distributors is even greater than depicted in the Five Year Plan. This leads one to question the economic justification for Texaco selling gasoline at its investment stations for less than it sells to its distributors for whom it has no investment and for which marketing costs are a minmum of 4 cents less than for its investment stations. One must therefore draw the conclusion that Texaco is subsidizing these stations from refinery and/or crude operations at the expensed of both its stockholders and independent marketers.

As was pointed out in 1976 hearings before the House Subcommittee on Energy and Environment, Committee on Small Business, it was through subsidization such as this in Europe in the late 1960's that Exxon was able to extinguish independent marketers as a significant factor in the market. In the process, Exxon lost a billion dollars in revenues and profits. However, as soon as the independent marketers were eliminated, Exxon and other major oil companies promptly raised their retail prices. (H.R. 94-1762—Report of House Subcommittee on Energy and Environment, Committee on Small Business, October 20, 1976, p. 30.) As I understand, it was this and other examples presented at these hearings that led to the Study on Subsidization of Motor Fuel Marketing by the Department of Energy, as directed by Title III of the petroleum Marketing Practices Act. Many petroleum marketing observers deemed the report on the study a "white-wash", and I suggest that an update of the study to reflect current market conditions would lead to entirely different conclusions than those contained in that report.

The surviving Texaco wholesale distributors contend that many of the practices mentioned above are contrary to the legislative intent of the Petroleum Marketing Practices Act; in particular, Title III as it pertains to predatory practices of refiners which present a threat to competition. The National Association of Texaco Wholesalers supported the decontrol of petroleum products and our members generally have been opposed to government intervention in the marketplace. However, we believe that the major oil companies have proven that they cannot be trusted to compete in the marketplace in a fair and equitable manner and that, because of the huge economic power they hold, they must be held in check by some sort of governmental action. This appears to be the only means of stopping the extermination of the small business petroleum marketer and the monopolization of gasoline marketing my a major refiners. We would hope that, after hearing the testimony presented here today and tomorrow, this Committee will be prepared to act to assist in the survival of this very important segment of the petroleum industry thereby preserving the degree of competition within the industry to which the American public is entitled.

Mr. Bedell. We are running short of time, but with Mr. McDade here, I presume we would make any special exceptions that he requested.

Mr. McDade. Thank you, Mr. Chairman. I would just like to ask Pat, following up on your colleague's testimony, whether or not you have any specific examples based on your own long experience in the business which would enlighten the committee.

Mr. Hickey. Thank you, Congressman.

First I would just like to say, Mr. Bedell, it is a pleasure to be with you and here in this meeting again, and I also would like to introduce someone to Mr. McDade, who I know he knows but possibly he didn't choose to recognize at the beginning because maybe he didn't know his name. This is Richard Mase from the Blossburg Oil Co. over here. He is from Tioga County—another good constituent of yours, Joe.

To respond to your question, Congressman, as the NOJC brand chairman, which I have had the pleasure of being for the last several years, I get phone calls from all over the United States. I can give you many specific examples which would back up the statement that Mr. Meintzer has read into the record.

The key point is—and I would like to pick up on a point that Jack made—for us to survive as a wholesaler, my dealers must be competitive in the marketplace. They have to be because my dealers, or my retailers, whatever term you want to use, are in direct competition with Texaco, Exxon, Shell, and Arco retailers.

We talked about the rebate program, and maybe I could take just 30 seconds and explain how that is working in our market and in markets along the east coast. The rebates are not the same in each division, at least they are not with Texaco. The one in the area in which I work, which is in the Philadelphia market, is working on what is known as a 4 and 1½ rebate program. Just to make it very simple, let's say a station is selling 100,000 gallons of gasoline a month, and let's say the base that was established for the rebate for whatever reason is 50,000 gallons. In that particular scenario, there is no rebate on the first 25,000 gallons of gas which is sold. Once 50 percent of the base is hit, which in this case would be 25,000 gallons, the direct-serve retailer begins to receive a rebate of 4 cents a gallon on every gallon that he is selling. Once he hits 50,000 gallons, and up to the example I'm using of 100,000, he continues to receive the 4 cents, plus he receives an additional 1½ cents on top of that, now that he has hit 100 percent of his base. He receives an additional 1½ cents retroactive to the first gallon.

Now, if that sounds complicated, it is, but that's the way it works. I have tried to state it as simply as I can. The net effect of all those numbers is the fact that the dealer's buying price from a major oil company—this one happens to be Texaco—is in itself reduced from between 4¼ cents and 4½ cents a gallon.

Now, to give you a specific example, Mr. McDade, as you have asked me, and this story is a factual one, which I can document to the committee, if they choose to have it. There was a particular station in a metropolitan market in the Philadelphia division, which I know about firsthand. It was a competitive station owned by a dealer. It was a piece of business where the major brand that was supplying that dealer chose to leave it; it was somewhat of a plum. The dealer was doing approximately 50,000 gallons a month of volume. The distributor wanted that piece of business and so did the major oil company in question.

Now, here's the way it laid out. The dealer tank wagon of the major, which was Texaco, at that point in time—and I'm talking about this month—was about $1.14 a gallon, including all tax. If you use the rebate program that I mentioned here, the net effect of a discount to that retailer was about 4½ cents, bringing the net effect down to $1.098. On top of that, the major oil company offered several inducements. One was the fact that it was an f.o.b. price, which meant there was no freight involved as far as the dealer incurring an expense to get the gas from the terminal to his station. Second, he was given a check for $50,000 to sign a contract for 5 years, or 3-million gallons, whichever came first.

Now, in my business, if I'm going to write a check to somebody for $50,000, and I have to go and borrow the money from a bank, somehow they kind of think I should start paying interest from the day I borrow it. So when I have to calculate my cost to be competitive in that situation, I have to factor in something for the cost of the money. The net effect to the dealer is he really wasn't paying $1.098 a gallon for the gasoline. He was paying $1.068.

Now, in this situation, the distributor's buying price was $1.08.2 a gallon. He has to haul the product, or has to pay someone to do it. The PUC rate in our State for that particular situation was 1.2 cents a gallon. That means the net effect at that point, all things being equal, all taxes being equal, and including the 1 percent discount which distributors or wholesalers do get—at least Texaco gives that—meant that the net effect was $1.09.4 a gallon.

Now, the dealer would be crazy if I didn't give him the $50,000 that he was getting from somebody else. I have to make the thing equal. I factored in the cost of that thing and I came up with 2 cents a gallon, which meant that my net price was $1.11.4; the dealer's net buying price was $1.06.8. The simple bottom line is, in order for me to make my dealer in that location competitive with other dealers, I would have to sell that gas at about 4½ cents a gallon less than I was paying for it. There is no profit for my company, or no profit for the dealer who happened to be in question in this particular example.

That doesn't make any sense; it's just stark raving madness. That is the kind of specific example that you can talk about. It isn't any different whether we're talking about the Baltimore market or the Florida market or what is happening out on the west coast. It's the same kind of thing that is happening.

When we borrow money, we have to pay the bill. Now, where Texaco factors in that cost of money in the operation, I don't know. I can't figure it out. All I know is that the street price in that situation made me totally uncompetitive and would have made the retailer, if he was going to be doing business with me, totally uncompetitive. Had he signed with us, Mr. Bedell, he would have been working at a 4½ cents disadvantage by doing business with me rather than with them. I don't think it is equitable, and I also don't think it happens to be fair.

Mr. **Bedell**. Thank you very much.

Mr. Mase, are you here for the Arco distributors?

Mr. **Mase**. Yes.

Mr. **Findlay**. Yes; and I want to read a statement for Arco distributors.

Mr. **Bedell**. And what is your name?

Mr. **Findlay**. My name is Jack Findlay.

TESTIMONY OF JACK R. FINDLAY, PRESIDENT, CALIFORNIA ARCO DISTRIBUTORS, INC., AND MEMBER, NATIONAL ARCO DISTRIBUTORS, INC.; ACCOMPANIED BY RICHARD D. MASE, PRESIDENT, BLOSSBURG OIL CO., INC.; DAVID LAUFER, COUNSEL TO CALIFORNIA ARCO DISTRIBUTORS, INC.; GERALD M. BOWEN, AND WILLIAM L. TAYLOR, COUNSEL TO NATIONAL ARCO DISTRIBUTORS, INC.

Mr. **Findlay**. I am the president of Spark Oil Co., which is an Arco brand distributor in the Los Angeles area. I am here today as president of California Arco Distributors, Inc., or CADI. I am also here as a member of National Arco Distributors, Inc., or NADI. I have here with me, who has already been introduced, Richard Mase. He is president of Blossburg Oil Co. in Blossburg, Pa. He has recently been canceled under a contract with Atlantic Richfield Co. To my right here is David Laufer, who is counsel for CADI, and to the right of Richard Mase is Gerald Bowen and William Taylor, counsel for NADI, the national Arco group. What I say here today is just a synopsis of the printed statement that is available to the committee.

In 1972 there were approximately 2,000 Arco branded wholesalers doing business in the United States. In October 1982, this number was reduced to 176. In 1980, prior to President Reagan's elimination of Federal controls applicable to the petroleum industry, Arco wholesalers sold approximately 70 percent of Arco's annual sales of motor gasoline. In July 1982, and following the effects of decontrol, Arco wholesalers' sales plummeted to approximately 30 percent of Arco's annual motor gasoline sales.

George Babikian, the senior marketing vice president of Atlantic Richfield, said on June 17, 1982:

> Arco has put some very tough requirements on the wholesale class of trade. It would be nice to get it at 100 percent retail.

On August 3, 1982, James Morrison, president of Arco Petroleum Products Division, said:

> Although the sales at Arco's 2,755 company-owned stations were up an average of 50 percent compared to the same period a year earlier, total sales for the firm rose by only 15 percent. Arco's wholesale operations fell by about 20 percent. Arco's profits rose to $273 million for the first half of 1982, from $78 million a year earlier. The expansion of gasoline sales through its own dealer network at the expense of its wholesale business represents a marketing plan aimed at restoring Arco's primary function on retail of petroleum sales products.

As noted earlier by Mr. Rasheed, this shift has meant greater profits for Arco, not for the dealers. It is therefore obvious to me, and I hope to you, that Arco has formulated plans to expand its retail sales by the elimination of its historic wholesale class of trade. Because the Petroleum Marketing Practices Act and other laws, both Federal and State, prohibit the direct elimination of Arco's wholesale class of trade, it is my opinion that Arco is implementing certain economic changes in the guise of changing marketing conditions to effect a termination of the franchise relationship.

It is for this reason that Arco has engaged in the following conduct: One, elimination of their distributor hauling allowances; two, a reduction, in many cases 50 percent of what it used to be, of the historic jobber margin; three, the reduction and/or elimination of credit and payment terms; four, the restriction of volume purchases, limiting the wholesale class of trade to unreasonably low quantities of petroleum products and at the same time allowing their retail stations to purchase all that they desire; five, the imposition of onerous contract terms designed to effect a breach of the contract resulting in the termination and/or nonrenewal of the franchise relationship.

Robert Taylor, an expert in petroleum marketing and a former executive of Standard Oil Co. of California, reviewed these practices, and in a signed declaration under oath has stated:

> It is Arco's intent to eliminate the wholesale class of trade which has long been part of their marketing structure and to focus on the retail class of trade exclusively. Arco intends to do this as rapidly as circumstances will permit.

Arco has and is forcing its distributors out of business by certain trade practices discussed in detail in the prepared statement. Arco has a preexisting plan to eliminate its distributors called, Program AFE. I have a copy here that can be for the record.

[Material referred to above is being held in subcommittee files.]

Mr. **Findlay**. Part of Program AFE states:

> Previous attempts to improve profitability by substituting a completely direct delivery system for the existing commission system simply resulted in the former commission agent performing the same function for a competitor, or another major oil company. Because of the commission agent's local relationship with the customer, he was usually able to persuade a great majority of them to purchase from whichever competitor or major supply he was then representing, resulting in a serious loss in volume and overall revenue.

Despite Arco's failure in its earlier attempt to eliminate its wholesale distributors, the author of Program AFE, Mr. W. L. Warrick, concluded that such efforts would be successful in the future because "the industry as a whole—meaning the integrated refiners—has recognized the profit improvement potential in elimination of the bulk plant/commission agent system and such a trend is now underway."

Mr. **Bedell**. Excuse me, Mr. Findlay. How much more do you have? We are going to have to go awfully soon to vote.

I think we had better recess for about 15 minutes. We will go vote and come back. Without objection, is that agreeable?

The committee will be in recess while we go vote.

[A short recess was taken.]

Mr. **Bedell**. The committee will come to order.

Mr. Findlay, do you want to continue?

Mr. **Findlay**. Yes. I don't have too much more to read here; probably the most important things are yet to come.

I have been quoting from Program AFE, which is Arco's program designed to eliminate their wholesale class of trade. Program AFE explains how Arco has been destroying its wholesale class of trade and also some of the reasons why Arco is doing so.

Another motivation which is more subtle lies in the distinction between retailers who operate refiner-owned service stations and independent distributors. Ordinarily, distributors in a free market function as free agents, who at the conclusion of their contracts, could shop the wholesale market among suppliers, whereas lessee-dealers are more or less locked in to buying from their landlord suppliers. Suppliers who do not wish to bear the risk of having to compete with each other for wholesale business would therefore be well-served by the elimination of independent distributors in favor of captive retailers.

Despite Arco's practices and motivations, we are not here today to ask for the reimposition of Federal controls on the petroleum industry. It is the last thing that any of us want. What we are here for is to focus the attention of this subcommittee on current predatory practices of the refiners and to bring about official scrutiny of the means by which the refiners are insulating themselves from competition with each other at the wholesale level. The facts speak for themselves. Refiners have instituted practices which are eliminating distributors and favoring lessee-dealers.

Also, the refiners appear to be cooperating by not taking on each other's terminated distributors, and the terminated distributors' volumes are being shifted to the more or less captive markets of lessee dealers.

One question continually presents itself. In the present glut, why aren't the refiners competing for our business? Distributors move approximately 50 percent of America's gasoline, and 85 percent of its distillate. Arco has been able to triple its profits with only a 15 percent volume increase. No doubt the systematic destruction of the independent wholesale class of trade has significant profitability for the integrated refiners.

Arco has vaguely explained that the destruction of its wholesale class of trade has been caused by competitive forces within the petroleum marketplace during the period since decontrol. In view of Arco's enormous 350 percent increase in profits from the first 6 months of 1981 to the first 6 months of 1982, from $78 million to $273 million, we question whether Arco is as surprised as it would have people believe at what is happening to its distributors. Arco's plan could not have been accomplished without the cooperation of other major refiners.

If there is one primary concern that we wish to leave with this subcommittee, it is our growing anxiety about the cooperative market philosophies and practices of the major refiners which have the effect of shielding them from competition for our business. We expect to take private action, but this subcommittee might well consider programming its future action to avoid the ultimate demise of the entire wholesale segment of the petroleum industry.

In California, we have recently lost some distributors because of Arco's impositions that have been stated. We will lose more distributors if relief does not happen soon.

Thank you. We would like to have some questions.

[Mr. Findlay's prepared statement follows:]

[See appendix F for supplemental statements submitted on behalf of California ARCO distributors.]

PREPARED STATEMENT OF JACK R. FINDLAY, PRESIDENT, CALIFORNIA ARCO DISTRIBUTORS, INC., AND MEMBER, NATIONAL ARCO DISTRIBUTORS, INC.

My name is Jack R. Findlay, and I am president of Spark Oil Company, Inc., a wholesale distributor of branded Atlantic Richfield ("ARCO") petroleum products in and around City of Commerce, California. I am here as president of California ARCO Distributors, Inc. ("CADI"), a mutual benefit corporation composed of branded ARCO distributors doing business in the State of California, and as a member of National ARCO Distributors, Inc. ("NADI"), a corporation composed of a number of branded ARCO distributors doing business in the United States. Accompanying me is Richard D. Mase, President of Blossburg Oil Company, Inc., of Blossburg, Pennsylvania. Richard is also a member of NADI, and his company recently had its gasoline supply contract cancelled by ARCO under circumstances common to many of ARCO's distributors. Also here with us to respond to any questions you may have is David Laufer, Counsel to CADI, and Gerald M. Bowen and William L. Taylor, Counsel to NADI.

We appreciate this opportunity to talk to you and answer your questions about the practices of refiners that are destroying the distributor segment of the petroleum industry, as well as being harmful to our customers. Most of the destructive practices appear to be industrywide. However, our supplier, ARCO, has generally led the way.

You will probably hear testimony about refiners other than ARCO who have taken steps to reduce the volume of their products marketed through wholesale distributors. These steps include: tightening credit terms * * * eliminating or reducing discounts * * * discriminating in prices * * * and discrimination in the allocation of products. ARCO, however, is not content merely to reduce the amount of its products marketed through distributors. It wants to eliminate its wholesale distributor class of trade altogether and to take over the customers supplied by its distributors.

Obviously, the elimination by ARCO of its wholesale distributors, and the taking over of their customers, could not be accomplished without at least the tacit cooperation of other refiners. Distributors generally have a competitive advantage over refiners in local markets because of the distributors' ability to notice and react quickly to changes in competitive conditions and because of their longstanding customer relationships. Yet, in many cases where ARCO has cut off distributors' supply, other refiners have been unwilling to supply them. Richard Mase can speak from experience on this subject.

In the many cases where ARCO has cancelled its distributors' supply contracts, one question continually presents itself, particularly in view of the keen competition resulting from the current supply glut: Why aren't the refiners competing for our business?

As I mentioned earlier, ARCO plans to completely eliminate its wholesale distributor class of trade. In case you think this is an exaggeration on my part, let me refer you to some of the facts and statements we have uncovered.

In 1973, ARCO's Board of Directors adopted a plan designed to eliminate its wholesale distributors who were then commission agents. The proposed plan was entitled "Atlantic Richfield Company, Products Division, Bulk Plant Profitability Project Program AFE." I will refer to it simply as "Program AFE." I have a copy of the plan which I would like to place into the record.

Program AFE was the first step taken by ARCO toward eliminating its wholesaler class of trade and taking over their markets. That this was their intent and desire was set forth unequivocably in the transmittal letter to ARCO's Board of Directors concerning the proposed plan. The letter stated:

"This is the Program AFE and supporting material authorizing proceeding to identify those Commission Agent Operations which would reflect a Rate Of Return improvement by elimination in favor of direct delivery by Atlantic Richfield Company."

ARCO's research indicated little danger of other integrated refiners taking on any of its eliminated wholesalers because:

"The industry as a whole has recognized the profit improvement potential in elimination of the Bulk Plant/Commission Agent system and such a trend is now under way." Program AFE, § 2.00.

The commission agents doing business in the western United States were later converted to ARCO distributors and became full-line jobbers pursuant to a settlement agreement with "Agent's Alliance, Inc.," an organization of branded distributors formed to challenge certain of ARCO's actions destructive of the wholesaler segment of the industry. Despite this settlement, however, ARCO did not discontinue its scheme to eliminate its wholesale class of trade. As recently as this year, for example, the Los Angeles Times quoted George H. Babikian, ARCO's Senior Vice President, as follows:

"Arco also has put some very tough requirements on the wholesale class of trade."

* * * * * * *

"It would be nice to get it 100 percent retail." (Los Angeles Times, June 17, 1982, at 1.)

These are published statements of ARCO's intentions. The facts confirm that the statements are not mere rhetoric.

In 1972, there were approximately 2,000 branded ARCO wholesalers doing business in the United States. Ten years later, in October of this year, there were less than 200 branded ARCO distributors. In December 1980, when the Department of Energy's price and allocation regulations were still in effect, ARCO's wholesale class of trade sold approximately 70 percent of ARCO's motor gasoline. In October 1982, approximately 20 months after decontrol, ARCO's wholesalers accounted for less than 30 percent of ARCO's annual motor gasoline sales. How did this happen?

Let me refer you again to ARCO's 1973 Program AFE, which recognized the strong competitive marketing advantage of wholesalers over national integrated refiners:

"[P]revious attempts to improve profitability by substituting a completely Direct Delivery system for the existing Commission system simply resulted in the former Commission Agent performing the same function for a competitor. Because of the Commission Agent's local relationship with the customers he was usually able to persuade a great majority of them to purchase from whichever competitor he was then representing resulting in a serious loss in volume and overall revenue." Program AFE, § 2.00.

Despite ARCO's failure in its earlier attempts to eliminate its wholesale distributors, the author of Program AFE, Mr. W. L. Warrick, concluded that such efforts to would be successful in the future because:

"The industry as a whole [meaning the integrated refiners] has recognized the profit improvement potential in elimination of the Bulk Plant/Commission Agent system and such a trend is now underway. . . ." Id.

Program AFE explains how ARCO has been destroying its wholesale class of trade, and also some of the reasons why ARCO is doing so. Another motivation, which is more subtle, lies in the distinction between retailers who operate refiner-owned service stations and independent distributors. Ordinarily, distributors in a free market function as "free agents" who, at the conclusion of their contracts, could shop the wholesale market among suppliers; whereas, lessee-dealers are more or less "locked in" to buying from their landlord-suppliers. Suppliers who do not wish to bear the risk of having to compete with each other for wholesale business would, therefore, be well served by the elimination of independent distributors in favor of captive retailers.

Despite ARCO's practices and motivations, we are not here today to ask for the reimposition of federal controls on the petroleum industry. It is the last thing any of us want. What we are here for is to focus the attention of this Subcommittee on current predatory practices of the refiners and to bring about official scrutiny of the means by which the refiners are insulating themselves from competition with each other at the wholesale level.

The facts speak for themselves. Refiners have instituted practices which are eliminating distributors and favoring lessee-dealers. Also, the refiners appear to be cooperating by not taking on each others' terminated distributors, and the terminated distributors' volumes are being shifted to the more or less captive market of lessee-dealers. Some specifics on these allegations are in order. The practices instituted by ARCO to eliminate distributors include the following unilateral modifications to its franchise agreements during the term of the agreements:

1. The imposition of an allocation system upon ARCO distributors in April 1982 which limits the volume ARCO's distributors are permitted to purchase, but permits ARCO's lessee dealers and Prestige Stations, Inc. (ARCO's wholly-owned subsidiary) to purchase gasoline directly from ARCO without any volume restrictions.

2. ARCO's discriminatory zone pricing system, under which lessee dealers receive discounts off the Dealer Tank Wagon price of as much as eight cents per gallon, while nearly ARCO jobbers are excluded. As a result, since April 1982, it has not been uncommon for ARCO's dealers to pay a lower net price for products than nearby ARCO distributors.

3. The major alteration of credit terms and the elimination of the one percent discount for payment within 10 days of receipt. These changes forced jobbers to instantaneously come up with substantial additional amounts of working capital, often costing them as much as two years' worth of accumulated capital or profits just to cover the additional cost of credit imposed by ARCO, with almost no advance notice.

4. The uncompetitive prices charged to jobbers, coupled with ARCO's elimination of the hauling allowance and reduction in the historic jobber margin, designed to reduce the volume of ARCO's products marketed through jobbers and resulting in the cancellation of the supply contracts of many jobbers who were then unable to purchase the minimum volumes mandated by ARCO in its supply agreements.

5. ARCO's elimination of its credit card system.

In the face of these destrucitve practices, you may wonder why ARCO's distributors continue to do business with it. As Richard Mase can testify, it is because the other refiners—the so-called competitors of ARCO—are unwilling to enter into formal supply arrangements with distributors who have been terminated by ARCO or, for what ever reasons, are simply looking for alternative sources of supply.

The lack of competition for our business seems especially suspicious when one considers today's glutted marketpace, coupled with the advantages we have over refiners in serving local markets. It also raises serious questions about possible cooperation between refiners to avoid competition among themselves for our business. Recall that ARCO's Program AFE clearly stated that the elimination of ARCO's wholesaler class of trade could not succeed without the cooperation of other integrated refiners.

I understand that ARCO's practices are currently under review by the Federal Trade Commission to determine the extent to which they may violate federal antitrust laws. If the federal antitrust arms do not act quickly and effectively, however, there may be no branded ARCO distributors left to benefit from any actions. Please do not forget that the number of branded ARCO wholesalers has dropped from approximately 2,000 ten years ago to less than 200 today. Also, during the past two years, the percentage of ARCO's sales to its wholesale and retail classes of trade has been reversed. In December 1980, ARCO's wholesale class of trade sold approximately 70% of ARCO's motor gasoline. In October 1982, ARCO's wholesalers accounted for less than 30 percent of its annual motor gasoline sales.

What ARCO has done is to cannibalize its wholesale class of trade. Proof of this may be found in a report of a press conference held earlier this year by James Morrison, the president of ARCO Petroleum Products Division:

"[A]lthough sales at Arco's 2,755 company-owned stations went up an average of 50 percent compared to the same period of a year earlier, total gasoline sales for the firm rose by only 15 percent. The significant difference is the result of ARCO's abandonment of all gasoline wholesalers, or jobbers, who fail to purchase the minimum volumes called for under their contracts. That has caused sales of ARCO's wholesale operations to fall by about 20 percent, the company said.

* * * * * * *

"Profits of ARCO's refining and marketing operations rose to $273 million for the first half of 1982, Morrison, said, form $78 million a year earlier." (Los Angeles Times, August 3, 1982, at 2.) Thus, ARCO has been able to triple its profits with only a 15 percent volume increase. No doubt the systematic destruction of the independent wholesale class of trade has significant profitability for the integrated refiners.

In testimony before the Senate Small Business Committee this past October, and undoubtedly in other forums as well, ARCO has vaguely explained that the destruction of its wholesale class of trade has been caused by competitive forces within the petroleum marketplace during the period since decontrol. So long as we keep in mind that, by competitive forces, ARCO is referring to its and its fellow refiners' predatory practices to eliminate branded ARCO distributors, the statement is technically correct.

In view of ARCO's enormous 350 percent increase in profits from 1981 to 1982—from $78 million to $273 million—we question whether ARCO is as surprised it would have people believe at what is happening to its distributors. Their elimination is not being accomplished through mysterious market forces, but rather pursuant to a scheme designed by ARCO in 1973 and perfected as soon as possible after the Department of Energy's price and allocation controls were lifted about 2 years ago. Further, ARCO's plan could not have been accomplished without the cooperation of the other major refiners, and in our opinion, it could only have been accomplished, and is being accomplished, through anticompetitive and quite probably unlawful practices.

If there is one primary concern that we wish to leave with this Subcommittee, it is our growing anxiety about the cooperative market philosophies and practices of the major refiners which have the effect of shielding them from competition for our business. We expect to take private action as it seems best for our legal interests, but this Subcommittee, in reviewing what has been happening to small business petroleum marketers since decontrol, might well consider programming its future action to avoid the ultimate demise of the entire wholesale segment of the petroleum industry.

Thank you again for giving us the opportunity to appear here today and to present our views. We would be happy to answer any questions you may have.

Mr. BEDELL. Thank you, Mr. Findlay.

Mr. Meintzer, you operate in Maryland?

Mr. MEINTZER. Yes, sir.

Mr. BEDELL. My understanding is that Maryland has a divorcement law?

Mr. MEINTZER. Yes, sir, they do.

Mr. BEDELL. Apparently that doesn't help the distributors.

Mr. MEINTZER. It is not beneficial at all. In my personal view, I don't feel that divorcement is the answer to the problem. If the practices are to continue as they are, then I would have to support removing these people from marketing entirely, divest them from marketing, if some change is not made soon. That's my opinion.

Mr. BEDELL. Divest who from marketing?

Mr. MEINTZER. Divest major refiners. But not divorcement. In Maryland it really hasn't solved the problem either for the wholesaler or the dealer. The same practices are continuing there.

Mr. Bedell. If I remember correctly, in hearings that we had previously, the dealers felt that it had been beneficial to them.

Mr. Meintzer. I think they did at that time, yes, sir. But I think if you were to ask them now, if they would be perfectly honest with you, I don't think they could say that that was so.

Mr. Bedell. What do you think needs to be done?

Mr. Meintzer. Well, there are many, many answers. You can probably run the gamut from controlling crude to divestiture. I really can't say that I have the answer to that. Perhaps some of these gentlemen here with me right now would like to express their views on that.

Mr. Bedell. Mr. Findlay, you indicated that you felt there shouldn't be legislation, but what do you think ought to be done?

Mr. Findlay. We had extreme difficulties in communicating with Arco, who is our supplier. They informed us of a volume restriction, a credit restriction. It is just unilateral; We have no input whatsoever. We cannot communicate with Arco. The people that we talked to tell us, "Well, that's company policy." There isn't anything we can do by that. We must abide by this policy that has been stated and I just can't help you."

Historically, Arco has provided a distributor panel on a national basis, that distributors can attend and Arco executives can attend. Discussions can be held and plans and facts stated. There was to be a meeting held in December 1982, but that has now been canceled with no reason to my knowledge as to why it has been canceled. So I think one way to do this thing is to open the lines of communication.

Mr. Bedell. Mr. Hickey?

Mr. Hickey. Mr. Bedell, you know, in this job as brand chairman, and over 17 years of business experience, you have a chance to form some relationships with Texaco executives, in particular, and with executives of other brands. These gentlemen all put their trousers on one leg at a time like the rest of us do. They are really very decent people. They go to church just like we all do. You know, they're good in their communities.

Off the record, several of them I have talked to have said quite frankly, that they believe the policy that Texaco and many other majors are pursuing is not in the best interests of these companies. However, it seems to be the mindset of the top management, that this is the intention the company has, and they are going to follow it because they have their marching orders. Colonels do what generals say.

The bottom line is—and I was just making that comment to a reporter out in the hall earlier—if I am supplying station A and supplying the Texaco brand, and Texaco is supplying station B directly, as long as you and Mrs. Bedell buy their product, the revenue is going into the coffers of Texaco, and that's as it should be. As long as both the dealer who is being supplied by Texaco or Exxon or anyone else and the dealer who is being supplied by the wholesaler has a more or less equal chance to gain Mr. and Mrs. Bedell's business, that is kind of what I think the free enterprise system is all about. I think that's exactly what the wholesale council of Texaco, of which I am an alternate member said in January, and I think it is what the other wholesale councils of some of the other major brands have said.

We don't want a better deal. We are not looking for an unfair leg up. All we would like to do is start off in a position so that we can compete for Mr. and Mrs. Consumer's business out in the marketplace. In the past we have done a darned good job. We have met the needs of the consumer. Our retailers have done an excellent job. We just think it would be good business on both sides to be able to work that out.

Mr. BEDELL. I understand that very clearly, and I hear what everybody is saying, which is the same thing. We haven't heard from the majors yet—we'll hear from them tomorrow—and it may be a different story as we do. But the witnesses we have had today have said, "Look, there is not fair competition. The majors are taking advantage of their position in order to drive out the small independent wholesalers and retailers." I think that's what we have heard from everyone.

Everybody says, "Yeah, this is the problem, but we sure don't want the Government to do anything about it." If that is the case, there is not much point in our even having these hearings. I'm not hearing you say we should, but if you folks are dreamers, to think that somebody up there at the top of Texaco or whoever it is that has been making those decisions is going to just all of a sudden change the way they operate and change what they're going to do, I don't think you're very good business people, if I could be that blunt about it.

Mr. Potvin.

Mr. POTVIN. You have requested a suggested solution. It had been our impression that you wanted primarily to deal with questions rather than answers. But I do have a specific suggestion I would like to make. I note that, thanks to this subcommittee, we appear to have the full attention of the Texaco brass at the moment. Mr. Ellis Gunnels, their vice president, is somewhere back there, and we thank him for his presence.

Between the present mounting casualty rate situation and divorcement or divestiture lies a rather vast middle ground. We feel there are PMPA amendments that could be usefully pursued. As an example, I don't think that anyone in this body of Congress or the other body had in mind that a major would price you out of the market and then terminate you for not selling your minimum contract amount.

As a further example, I am sure it was not the congressional intent that a refiner assert the right that during a time of shortage it can eliminate whole classes of trade arbitrarily. These sorts of things could be dealt with. Again, the thought that there might be a Wagner Act for small business so that their representatives could bargin concerning the content of contracts. There might be thought given to the apparent misuse of the brand on a fungible product as an undue control mechanism. I think there is a fertile field there. If the subcommittee would like in writing a list of suggested PMPA-type amendments for its consideration, I would be more than pleased to submit them.

Mr. **Bedell**. Well, I guess I'm the only one here from the subcommittee, but I would personally like to have any suggestions you might have.

I am not here to try to sell any proposal or anything. The testimony we have had so far seems to clearly indicate there is a problem for both dealers and distributors. If there is a problem for dealers and distributors, it is a puzzle to me that you would come before me and say "we've got a real problem but don't do anything about it," or, "We don't want the Government to do anything about it."

Mr. **Potvin**. That was not the impression we meant to leave.

Mr. **Bedell**. Well, it has been left by some of your people, Mr. Potvin. I'm not here to argue with it. That's up to you. It's your life and death, not mine. I'm going to be buying gasoline——

Mr. **Potvin**. You're hearing a cry for help, with all that implies.

Mr. **Bowen**. Mr. Chairman, I am Gerald Bowen, counsel to NADI.

I am in complete concurrence with what Mr. Potvin has said. It is very clear that there is a problem. Frequently groups coming before committees saying, "the treatment we are receiving is unfair; this hurts" are commonplace. What we are talking about today and the numbers you are hearing are more like genocide than they are just unfair treatment.

I believe the witnesses were prepared to demonstrate what was occurring. As far as specific solutions, as Mr. Potvin indicated, there is a fertile field and we have a number of ideas that we would like to discuss with you in detail.

But specifically, what this committee may find useful and would be very useful to the people who are experiencing these problems is helping us overcome the barrier to information about what is occurring. In the testimony that you just heard from Mr. Findlay, he raised a question, and that is, since Arco recognized that it's main problem in eliminating wholesalers was that the wholesaler would simply turn to a competitor and Arco would lose the volume, but they have been able to go ahead and succeed in eliminating wholesalers without this problem. What we are interested in is why, in a glut, no one is competing for the wholesaler's business.

Richard Mase has been terminated by Arco. We are representing him individually, or his company individually, in his dealings with Arco, as well as in his capacity as a member of the National Arco Distributors Group. In the course of his conversations with Arco, he went to them to request an additional 5-day supply in his attempt to keep his business afloat while he is trying to locate another supplier, other suppliers being strangely disinterested in an oversupplied market. Having the business of a very solid company that has 10 million gallons a year of solid accounts, we were denied the extra 5-day's supply. I think Mr. Mase has some very deep and valuable insights. But as far as what the committee could do that would be useful to this group preliminarily is to help us deal with the fact that we keep getting stonewalled about information.

Mr. **Bedell**. By whom?

Mr. **Bowen**. By the major refiners: simply these are ordinary market forces. We have a little difficulty in shedding the kind of light into those matters that this subcommittee might be able to.

Also, there is information that is being developed in litigation with Arco that is subject to protective orders. It is possible that the committee might be interested in obtaining that information. The proper procedures would have to be followed. But I believe there is a matter of an investigatory function that this committee could perform preliminarily that would make the specific recommendations much more meaningful.

Mr. **Bedell**. You are correct, that these hearings were held to try to gather information. That is absolutely correct. I am only one member of the committee, but I have been a little disturbed by hearing of the problems that you describe, and then having my understanding of what was said, that "These are the problems, but we sure don't want you to do anything about them."

Mr. **Bowen**. That is not what we're saying.

Mr. **Bedell**. That is not what you're saying, but I think it is with you, isn't it, Mr. Findlay?

Mr. **Findlay**. In my statement I said we do not desire Federal control, relating to the way that it used to be. We do need help from the committee.

Mr. **Bedell**. OK, fine; I'm glad to clear that up.

I guess I would like to follow up your statement a little bit. We have a surplus at this time of refinery capacity, if I understand it correctly. You would think that at a time of surplus refinery capacity that, as distributors, you would be able to shop around for your product pretty well. Am I hearing you correctly that you are not able to do that? Are there legal reasons that you're not, or is that because of geography or——

Mr. **Potvin**. It's inexplicable, Mr. Chairman. Historically, the smart jobber controlled his volume; that is to say, he owned his stations or had long-term leases. Every 3 to five years he would look around. Would another supplier give him a better deal? This, too, is competition. It is universal today.

Mr. **Bedell**. Do you sign exclusive agreements, for example, with Arco or Texaco, whoever it may be, that you will not buy gasoline wholesale from anybody else?

Mr. **Hickey**. The contract that was offered to us 3 years ago had that right in it. It said: One, that you must buy so much gas from us, otherwise the contract is null and void, the minimum clause. The other clause was that if you bought somebody else's gasoline and put it under the Texaco flag, the contract would be canceled because that is commingling.

We happen to run our company in a way that we have never commingled gas, and are quite proud about saying that we haven't. But as our company has grown, we have asked Texaco to give us additional volume so that we don't have to be put in that position. It is kind of one of these things that you're damned if you do and damned if you don't.

Now, the status quo is never acceptable in any business situation, Mr. Bedell. I know you understand that. But the contract that I'm signing, if I can't go to someone else and sign another one, what am I going to do? It's like being between a rock and a hard place.

Mr. **Bedell**. You can buy from other distributors?

Mr. **Hickey**. I can if they're willing to sell it to me, but I haven't yet been able to find another major who was interested in picking up our volume, a little in excess of what Mr. Mase sells.

Mr. **Bedell**. But aren't there a number of smaller refineries that have excess capacity and would they not——

Mr. **Hickey**. Let's say smaller refiners. There are. But unfortunately, oftentimes their access to crude is at a higher price than, let's say, a major's might be. Therefore, their price is even less competitive than the situation I'm in right now.

Mr. **Bowen**. In response to your inquiry, is there a legal reason why distributors aren't shopping the market. I am intrigued by the fact that trademark infringement and commingling product adulteration are apparently prohibited by the Lanham Act, which permits a trademark licensor to require a licensee to respect the integrity of the product. But the definition of what constitutes commingling or misbranding or adulteration is completely the province of the licensor. It would seem that some sort of dictionary definition of commingling, for example selling product under the sign that it wasn't produced by the licensor might be relevant. But that is not the definition that the trademark licensors or the major refiners abide by.

It would maybe be relevant if the trademark were an indication of product quality. It, in fact, isn't. The products are fungible. The only relevance of a definition of commingling or misbranding that is current in the marketplace, that the refiners themselves have written, is to prevent shopping on the wholesale market by their customers. Perhaps the trademark used to be an indication of the availability of credit card service, but we are seeing that is being unbundled now.

The only thing that the trademark appears to represent to me—and I am prepared to be educated on it—is a way that the refiners fence in their customers from shopping the open wholesale market. That does represent a kind of legal barrier to shopping the open market. The thing that intrigues us the most is, in the oversupplied situation, why no one will talk to Richie Mase about taking over the business that he is prepared to offer them. I think some questions directed to Mr. Mase might be very revealing to the subcommittee.

Mr. **Bedell**. Well, we are short of time, but did you have something you wanted to say?

Mr. **Mase**. Just to elaborate on your question, have I been approached or can I sign a contract with someone else.

Since May this past year, when my contract was cut, I have contacted five other major oil companies and so far have been unsuccessful in signing a contract.

Mr. **Bedell**. Why is that, do you know?

Mr. **Mase**. For most reasons, they are saying that they just aren't interested at this particular time. They will not, so to speak, wine or dine me. I will call them and they are very reluctant to talk to me.

Mr. **Bedell**. Are they distributing in your area?

Mr. **Mase**. In some situations, yes. In other situations, no. We're in a very remote area, in north-central Pennsylvania, so we are limited on the number of major oil companies who are in our area as far as the pipeline and internal supply situations. But it is very hard to believe, with the refineries running at 68 percent, and with a glut so to speak, why we can't go out and buy 10 million gallons of product a year, since we have paid our bills consistently for 16 years. It is very hard for us to believe that we can't do that.

Mr. **Bowen.** Mr. Chairman, he also has recounted to me at earlier times in the market's history, where there has been an oversupply, how he has been deluged by requests from other refiners saying, "We're interested in your business; are you interested in us?" You might want to talk about how they wined and dined you before and where are they now in the same oversupply situation.

Mr. **Bedell.** You don't need to talk about it, but the fact is that it is different today than it was previously?

Mr. **Bowen.** That's correct.

Mr. **Mase.** Yes, sir, that is true.

Mr. **Bedell.** Mr. Meintzer, in your testimony, I guess you talked about the majors taking away your commercial accounts by selling to them direct. Is that right?

Mr. **Meintzer.** This has occurred in many places. It hasn't happened to me directly, sir, but being aware of what I'm aware of from all jobbers across the country, who call Pat and myself, as well as through the NATW offices, we are aware this is occurring. We can document it if you would like to have the information.

Mr. **Bedell.** Is that a problem to you?

Mr. **Hickey.** It is not a problem in our particular market, but it has happened in the past, definitely. I mean, I hear about it when someone calls me from various different places. We will be happy to supply that information.

[See appendix G.]

Mr. **Findlay.** Mr. Chairman, let me recite one incident in our case.

We had supplied a retailer with one unit for approximately 12 months previous to April 1982. When Arco imposed volume restrictions upon us, our customer contacted the Atlantic Richfield Co. and in 2 weeks had secured a contract with them to operate that one unit, supplied directly by them, and under contract. He had currently used 150,000 gallons per month in that one unit, and immediately, after securing the contract with Arco, used 450,000 to 550,000 gallons per month in that one unit. He is currently using that volume. When I asked him how come you went to Arco, he said you guys could not supply the volume that I needed.

Mr. **Bedell.** But Arco had you on a limited volume?

Mr. **Findlay.** Starting April 1, 1982, Arco imposed volume restrictions upon us.

Mr. **Bedell.** Why would they do that in today's market?

Mr. **Findlay.** We're asking that same question, sir.

Mr. **Bowen.** That's exactly the point.

Mr. **Findlay.** That's the point. We want to know why they impose that restriction upon us and they do not impose it upon their retail class of trade.

Mr. **Bedell.** I think they're going to be here tomorrow and we'll sure try to find out.

Mr. **Hickey.** I would like that question to be asked of Texaco, too.

Mr. **Bedell.** Texaco has done that, too?

Mr. **Hickey**. They have told us informally and formally that they are not going to raise our contract to meet the contractual obligations that we have. It doesn't make any sense to me, Mr. Bedell. I don't know why. We kind of think we pay our bills and have for 17 years, and we kind of think we keep our noses clean, and we would like to do business with them. We would like to do more business with them.

Mr. **Bedell**. I can understand why you wanted to have these hearings. I cannot understand you're not being more disturbed.

Mr. **Potvin**. We couldn't be more disturbed. If we appear to be an island of calm, it is misleading. This is a cry for help. There is no other thought, Mr. Chairman.

I was dubious about this. I have been around the country talking to jobbers. Let me tell you, if something isn't done, a year from now you're going to have a much smaller jobber corps in this Nation with all the shortages in rural and small town America that that implies. In New England I am told by Texaco jobbers that large numbers of them have been told the following by Texaco: "You will have no growth this year, you will have no growth next year, and don't expect any within the next 5 years. You are frozen at present levels."

Mr. **Bedell**. Regardless of what they could sell?

Mr. **Potvin**. That's right. You just can't have any more.

Bear in mind, the base economics here are that if you're a refiner you want to get up around 90 to 94 percent for that incremental curve. They are down around 70 and not competing. Why?

Mr. **Bowen**. Mr. Chairman, one final comment from me on this. I am guessing, but with what I know about how the trademark system works and how the refiners operate their business, the only reason I can think of that they would be turning away wholesaler business in this particular market is because of the future advantage that would accrue by eliminating the free agents from the market.

The one thing I am wondering is why they are not competing with each other for the wholesaler's business. They are insulating themselves from having to compete with each other somehow, and I am intrigued about that.

Mr. **Bedell**. I appreciate your testimony very much. It has been very enlightening.

Mr. **Hickey**. Thank you, Mr. Chairman.

Mr. **Bedell**. Our final panel will be Jack Blum, representing the Independent Gasoline Marketers Council, and Tim Columbus, from the Society of Independent Gasoline Marketers of America, both of whom are back here again.

Mr. Blum, do you want to go ahead.

PANEL CONSISTING OF JACK A. BLUM; AND R. TIMOTHY COLUMBUS

TESTIMONY OF JACK A. BLUM COUNSEL, INDEPENDENT GASOLINE MARKETERS COUNCIL

Mr. **Blum**. Thank you, Mr. Chairman. It is a pleasure to be back here again before this subcommittee. Rather than read my statement, in the interest of time I will ask it be made a part of the record.

Mr. **Bedell.** Good. It will be made a part of the record and we would appreciate it if you would summarize it.

Mr. **Blum.** First, on the question of what's happening in marketing today, a few words are in order. From our perspective, what is happening is we have had a 20 percent decline in demand for gasoline, a push toward efficiency on the part of everyone in the market to try to hold market share, and that has made for very, very difficult competitive situations. It guarantees that a very large number of people will go out of business and there is no gainsaying it and walking around it. When you have 20 percent less volume, and everybody is trying to increase volume to improve efficiency, there simply isn't as much room for as many players as there was before.

We understand that. Some of our people are affected and some of them are going under as a result of it. But we want that kind of selection-out process to operate as a result of a competitive marketplace in which the different players succeed or fail on the basis of economic efficiency and not on the basis of an arrangement they have or a deal they have made or just the raw exercise of monopoly power.

I think several salient points have to be made here. The first of them is that antitrust enforcement is a dead body still above ground. We have an Assistant Attorney General in charge of antitrust who doesn't believe in the antitrust laws, has told the committees of Congress that he has no plans to enforce them. He says he won't enforce laws that the Supreme Court has upheld as recently as 2 months before. He made his statement that he wasn't going to enforce the law, and I think it is scandalous that Congress permits him to treat people who come in to complain about antitrust violations as if they're some kind of fools talking about an economic theory that makes no sense. He should understand that he's an officer of the Government, he has sworn to uphold the law, and he ought to enforce it.

The Federal Trade Commission is a touch better, but I think that's about as far as I can go. They seem to be in a mode of economic theorizing and trying to prove some Chicago school notions, and that isn't the law. I think the committee has to bring the Chairman of the Federal Trade Commission in and explain to him that there is a law and the law is meant to be enforced, and it isn't optional. It isn't a question of whether his chief economist thinks it's the latest thing out of Chicago school theory or not; it's the law and it ought to be enforced. That is critical to us.

Turning away from that, we have a very specific problem. It is specific in a couple of regions of the country, and it is critical. Today, in Los Angeles, the Atlantic Richfield Co. is selling gasoline on the street at 99 cents a gallon. When you subtract the State of California's tax, transportation, and dealer margin back out, it means they are selling gasoline to their operation out of the refinery at something like 75 cents to possibly 77 cents a gallon. When you multiply the 75 or 77 cents a gallon, you find out that it adds up to less than the cost of crude oil laid in to the refinery in Los Angeles Harbor. There is something wrong with that.

Now, the question has come up, is that subsidy? Well, that depends on how a company keeps its books, and we can go through all kinds of bookkeeping games from now until the end of time to figure out whether it's a subsidy.

What we do know is this: That where Arco stations are head to head with highly competitive, highly efficient, nonbranded independent marketers, their prices are so low that we can't figure out how it is possible to do that unless they have some kind of deal. The prices are so far below the rest of the market that one of my members told me—he has a station near an Arco station—the only way he gets a customer is when Arco runs out of gasoline. He says mercifully that happens pretty often, because there are lines at those stations and they buy every drop the guy has for sale immediately. That Arco price is below market clearing. It has as its motivation driving people out of business.

When we have confronted Arco with it, they say go talk to the Federal Trade Commission. I have no notion of conducting a meeting where I get no reception. I have been over there and they don't really seem to be terribly interested. What I need is somebody to tell them to get interested.

But apart from that, we started looking at what else Arco was doing. We discovered that to keep in gasoline, because their prices are so far below marketing clearing level, they have to buy the product on the spot market, which is our source of supply, which keeps the spot market prices high, doesn't permit them to decline, keeps us priced out of the market, and keeps them in gasoline.

They are also trading fuel oil for gasoline, which is a usual thing in the industry, but they are also tying up independent refiners and processing agreements so that they too are pulled out of the market as independent suppliers of gasoline. So we found ourselves forced to compete, but without suppliers who can even come close to matching them in terms of price. Well, that brings us to how is this all possible and how are they then able to make money if the price of their gasoline is below the price of crude oil. On that we have concluded that they have been using, to very great advantage, the method of calculation of the windfall profits tax on their Alaskan crude. The computations are discussed in my testimony.

I have another document which I would like to have made a part of the record.

[See appendix H.]

Mr. Blum. It's a research abstract done by Drexel, Burnham Lambert which analyzes the Atlantic Richfield Co.'s profitability and analyzes how they operate. What they have done—and it's very skillful—is they have increased the cost of transportation which, in effect, becomes a deduction from a windfall profits tax charge. The higher the transportation cost on Alaskan crude, the smaller the amount of windfall profits tax they pay.

So by doing that, they have managed to cut their windfall profits tax bill very significantly, but we think it is a transfer pricing mechanism to duck taxation and we think it has provided the company with a significant Government subsidy that enables them to do this kind of thing in the marketplace. We think there has to be a remedy for that. The remedy for that is either at the Internal Revenue Service, the Treasury Department, which has the authority to reallocate costs, or legislation which would require or permit the sale of Prudoe Bay crude at Valdez, which would set a market price and really begin to undercut the Mickey Mouse that's going on in the transportation system.

The tariff, the whole question of the tariff and the TAPS pipeline is critical. Yesterday the Federal Energy Regulatory Commission astonished me by saying the consumers had no interest in transportation costs for crude or product. It was a rather remarkable decision and reverses almost 80 years of congressional understanding of the situation.

The TAPS tariff situation is one that is critical to this, because every dollar increase in the TAPS tariff means 70 cents less paid to the Federal Treasury in windfall profits tax. At the moment, Arco is charging itself $6.04 a barrel on the crude it ships through its portion of the TAPS line. At that rate we think—and they are free to argue up, down and sideways because I'm not privy to their numbers—we think they can pay off their investment in the line in approximately 3½ years, which is appropriate if they were investing in Bolivia or Namibia or Bangladesh, but we think an investment in Alaska doesn't need a 3-year payout. We think their high tariff is directly connected with their ability to lower their windfall profits tax liability.

Finally, I should say this. With the end of decontrol, we are now confronted with all of the underlying inequities in this industry. All the arrangements over the years that different people built into the law to take care of themselves, the tax benefits, the extra incentives to do this, that, or the other thing, are suddenly turning up in a hotly competitive environment and in a shrinking market. The message is, we can't afford to have somebody subsidized by the tax laws at the crude level because where that is going to turn up is on the street in Los Angeles in the form of a 99-cent price that is going to drive us out of business.

I think we have to do something to separate that crude problem and the various tax benefits and subsidies that were built into that from refining and marketing. It may turn out in the end that the only answer is to separate crude oil from refining and marketing, and that is where you will begin to see a shakeout based on economics and not based on whose ability to play which Government subsidy is best.

If you have any questions, I will be delighted to try to answer them.

[Mr. Blum's prepared statement follows:]

PREPARED STATEMENT OF JACK A. BLUM, COUNSEL, INDEPENDENT GASOLINE MARKETERS COUNCIL

My name is Jack Blum. I am the General Counsel of the Independent Gasoline Marketers Council, a trade association of nonbranded independent retailers of motor gasoline.

The Subcommittee's review of developments in petroleum marketing since decontrol is timely and will serve a useful purpose by previewing the issues which the next Congress must face.

Our association still believes that decontrol was a good idea. We are delighted the government is out of the price and allocation business and with the exception of a few misguided souls at DOE, out of our business. We think that the government's departure from the management of gasoline distribution has had substantial beneficial effects on the industry as a whole. Consumers have seen those benefits in the form of lower prices and adequate supplies of product.

When controls ended so did the government program of crude oil price equalization. For the first time in 30 years, crude oil is sold in a market which is untouched by direct government intervention. This has brought on new supplies and has helped erode OPEC's market power. At the same time, it has forced all of us to focus once again on an industry structure which gives vertically integrated companies monopoly power, and on previously hidden government subsidies which some companies can use as competitive weapons.

During controls many retailers were artifically protected from competitive pressure. When the controls went, they had to shape up or go broke. Throughout the industry, companies began to scramble for market position by improving efficiency and cutting prices. The scramble was made more intense by the 20-percent gasoline demand decline. Not everyone can increase volume in a declining market and that means thousands of retail stations have been forced to close.

As several people in the industry have put it, you can't have 100 deer grazing on 10 acres and expect all of them to survive.

In our view, the issue is whether the surviving firms will be chosen by the market on the basis of efficiency or by the exercise of monopoly power supported by bad government tax policy and law enforcement failure. We would welcome the former, but at this point it looks as if monopoly power and bad government policy have the decisive upper hand.

Normally monopoly power is contained by the antitrust laws. We are, however, working with an administration which does not believe in the antitrust laws and has no plan to enforce them even when clear violations occur. Antitrust Division spokesmen have said as much at congressional hearings and the statements have stood without serious protest.

The Federal Trade Commission seems obsessed with its own economic theories and fitting potential cases into their theoretical slots. They seem manifestly unconcerned with the rather messy facts present in a given market situtation where monopoly power is being exercised.

My comments on monopoly power are provoked by the Atlantic Richfield Company's calculated, systematic, destruction of nonbranded independent marketers in its market area. In April, Atlantic Richfield announced that it was eliminating credit cards and passing the several cent a gallon savings from reduced costs along to its customers. The savings amounted to some 3 cents to 4 cents a gallon which were soon reflected in lower pump prices. We had no quarrel with the credit card decision and we are used to that kind of competition. If Arco wanted to become a nonbranded independent, so be it.

Soon after the first round of cuts, however, the company again cut its prices by 3 cents and another 4 cents and finally was selling gasoline to its dealers in locations facing independent competition at prices 10 cents below the prevailing wholesale rack price.

Arco's below market pricing behavior has continued. This Monday in dozens of California locations, Arco was selling gasoline at 99 cents a gallon. When tax, transportation and dealer margins are taken into account, the wholesale price of gasoline is 75 cents a gallon, a price well below the stated market price for crude oil.

Arco has one intention. It wants to run us out of business to gain monopoly power in the markets in which it participates. The company has gambled that the antitrust laws won't be enforced while it runs us out and that Congress won't care and won't act.

To target independent competitors, Arco has divided its marketing operations into more than 1,000 separate competitive pricing zones. The zones are drawn to allow Arco to selectively undercut independent marketers and maintain higher prices in other, non-competitive stations. The zones make private antitrust cases against Arco expensive and complex. The zone maps are a highly confidential document and Arco employees with maps have been told that allowing these to leave the company will be grounds for dismissal.

When charged with predatory pricing, Arco will argue they are meeting the competition in the zone. Atlantic Richfield is the lowest priced supplier in each of its marketing areas so that the argument will not be true, but proving it untrue will be very difficult.

If the market is working, when a major supplier cuts gasoline prices other suppliers are forced to cut prices to keep their own market share. Within a matter of weeks or, perhaps months after a price cut is instituted begun by a single refiner/supplier other suppliers fall into line.

In this case, other suppliers' wholesale prices haven't moved to meet Arco's. We were mystified and investigated. Arco's prices have been so far below the market that its stations have been running out of gasoline. It has been selling more gasoline than it can produce in its own refineries. Arco has gone to the spot market and pruchased gasoline at prices far in excess of its own prices to its dealers in order to have enough product to keep stations supplied. Arco has also arranged processing deals with refiners. The deals have take those refiners out of the business of supplying gasoline for others. Arco's actions have effectively dried up the supplies of its competitors.

Our association has now tracked Arco's transactions with a number of its suppliers and we are giving that information to the Federal Trade Commission in the hope that the Commission will act. We believe that any firm which buys high priced spot product to maintain below the market street prices is violating the antitrust laws.

In our minds, the question remained, however, as to how Arco could do what it is doing and at the same time remain profitable. Its quarterly earnings are telling us that they are making money at every step of their business despite the fact that they are selling gasoline at prices below the price some refiner/competitors are paying for crude oil.

We have concluded that Arco's behavior has been financed by its underpayment of the windfall profits tax. The way it calculates its liability has the effect of giving the company hundreds of millions of dollars that should have gone to the U.S. Treasury or the Treasury of the State of Alaska as royalty and tax. This is the money which is putting us out of business.

To understand Arco's underpayments one must first remember how the windfall profits tax is calculated. As you will recall, the "windfall" is defined as the difference between the previous "controlled" price of the crude oil and the "current" removal or market price. The tax is on a percentage of the "windfall." In the case of Sadlerochit crude, the windfall is taxed at a 70 percent rate.

When the windfall profits tax was passed, Congress was confronted with a problem with respect to Alaskan crude. There is no "market" price at the wellhead for the crude because there are no refineries on the North Slope. Moreover, there is no market price at Valdez because Congress in its wisdom forbade the selling of crude outside the United States. Therefore, Congress decided to establish a "market price" for Alaskan crude through a series of reverse calculations which begin not at the wellhead, as one does for other crudes, but in the end market where a "market price" for comparable crudes is determined. Then the cost of transporting the crude from Alaska to the market is subtracted to determine the "wellhead" price or, as the law calls it, the "removal" price.

The difficulty with these calculations is that the numbers which are subtracted are within the control of the taxpayer. Atlantic Richfield sets its own tariff on the TAPS Alaskan pipeline and Atlantic Richfield sells itself its ocean shipping at whatever rate it thinks it can charge.

Every dollar by which Arco can increase its ocean freight costs or its pipeline costs take seventy-plus cents out of the U.S. government's hands.

The State of Alaska is also a big loser in that increased transportation costs lower the royalty and severance tax payments to the State.

The Alaskan pipeline story is a major scandal in its own right. According to the companies which own it, the line cost $9.4 billion to build. If we accept the construction cost at face value, and there is reason to question it, and then calculate what the annual gross revenue of the pipeline is we find current tariffs and current utilization rates give the owners roughly $3.5 billion a year. Even allowing for extravagantly high spending costs they will have the line fully amortized in 4-5 years. The line, however, will last for at least forty years and possibly longer.

If the pipeline were in Namibia, Bolivia, or Bangladesh the quick payout could be justified. There is no excuse for it in Alaska. The tariff issue has been pending before FERC for almost ten years without action and the companies are now pushing legislation which would completely deregulate the line.

We think that if the tariffs were examined carefully, the current tariff of $6.04 a barrel which Arco charges itself would be set in the range of between $1 and $3.50 a barrel. If the depreciated cost methods were used and the rate base examined, the rates could be as low as $.90.

Proper rate making would mean almost $1 billion a year in extra federal tax revenue and would make those $.99 a gallon California sales highly unprofitable.

You will recall that I accused Arco of deliberately targeting independent competitors. The best evidence of Arco's intent lies in the fact that Arco could make as much money as it now does selling to dealers by closing its retail stations, closing its refineries and selling Alaskan crude oil at the world market price. It could even sell at a price somewhat below the world market price and still have the same profits. We think that its objective in confining sales to its own branded dealers is to have a fully controlled distribution network unimpeded by competition from the likes of us.

Atlantic Richfield has been unique in its ability to do this kind of destructive marketing because its Alaskan crude oil costs so little, is such a large portion of its overall supply and because its tax situation is so unique. Other participants in the Alaskan fields have been forced to use their tax advantage in Alaska to balance other problems. For example, Exxon has been forced to purchase Saudi Arabian crude at prices substantially higher than the world market level and according to trade sources is losing money on each barrel of Saudi crude it refines. It has used its Alaskan tax windfall to offset those losses. British Petroleum, through Sohio the other major owner of North Slope crude, has suffered a range of problems worldwide which have encouraged it to use Alaskan profits as an offset rather than as a way of destroying competition.

But we are convinced that as soon as this problem is solved others will emerge as long as crude production is in the hands of companies which refine and market.

To summarize what I have said, during the thirty year era of crude oil price regulation, advantages that one producing company had over another in the cost of tax treatment of crude oil were of secondary importance. Now that the controls are gone, every penny advantage in crude oil markets is a life or death matter for marketers. It is no longer possible for Congress in its wisdom to say, "These are nice fellows, they need a subsidy to do this, that or the other piece of development."

In the new world of declining markets, decontrol, and minimal antitrust enforcement, subsidies will wind up being used to eliminate competition.

The problem that I have outlined can be remedied in a variety of ways. Some of the remedies are more effective than others and some are more politically salable than others. But before turning to those remedies, I should say that there is one remedy that will not work and that is divorcement legislation.

Atlantic Richfield is divorced. All of the operations which are now pricing product below the cost of crude oil are operated by dealers. It does us little good to know that we are competing with "independent businessmen" as we are being run out of business.

Having said that, let me turn to the remedies that will work.

The most drastic and yet the ultimate solution to the problem at hand is the operation of refining and marketing from crude oil production. Divesting at this level would mean that the various arrangements that have been made among producers would have no effect on competition in refining and marketing. It would mean that if a producer had cheaper crude oil he would be forced to cut his price at the crude oil level and meet other major companies in crude oil production head on. It would mean that government tax arrangements designed to encourage production of expensive or hard to find crude would have the desired effect and would not be diverted into other enterprises.

All of the proposals that stop short of crude divestiture will solve a portion of the current problem, but will mean that we will be back again and again and again as new problems develop and the situation changes.

In the case of Atlantic Richfield, the most important short term fix is to change the tax situation in Alaska so that they pay their fair share of windfall profits tax. Alaskan crude oil costs 25 cents a barrel to produce. Untaxed, that crude oil can be used to drive any Arco competitor out of business. If taxes are fairly and appropriately applied, the leverage that Atlantic Richfield has will be reduced significantly.

The solution is simple: IRS can reallocate the costs as it sees fit. It should be forced to get to work on an equitable reallocation.

Parenthetically, it should be said that if there were vertical divestiture, namely if crude were separated from refining and marketing, the impact of cheaper crude oil from Alaska would lower the price of crude oil worldwide. What Arco has done is to selectively cut the price of product on the street so that its crude oil price advantage drives the competitors it most dislikes and which are least able to respond out of business. It is not buffeting the OPEC price.

The tax issue deserves rapid attention for a second reason. The country is confronted with a $180 billion deficit and it can ill afford to allow a few companies $1 billion tax break through negligence in the collection process.

If tackling the tax problem directly is too difficult, several other options remain. One is to lift the ban on the sale of Alaskan crude oil at Valdez to foreign producers.[1] If the ban were lifted, a market price would be established at Valdez and the games that Arco has engaged in with respect to ocean shipping and final market prices would be curtailed.

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[1] Contrary to popular belief, Arco lobbied heavily against permitting the sale of Alaskan crude to foreign purchasers at the time the issue arose.

Other possible remedies include legislation which would direct FERC to set a tariff level on the TAPS pipeline based on rate of return on depreciated investment. That approach would insure that crude oil produced in Alaska now and in the future could be produced on a competitive basis through a system of genuine competitive bidding as well as insure that the federal and state governments got their fair share of the tax revenue.

Finally, the antitrust laws should be enforced. I realize that this has been said so many times it probably bores you. But the antitrust laws have a genuine economic purpose and they are the bill of rights for small businesses attempting to compete in a world of gigantic business. If the members of this committee want the country to be run by a few gigantic companies, then continued silence about administration antitrust policy is in order. If you care at all about small business, or about any of the problems I have discussed this morning, every one of you should be enraged by the preposterous statements of Mr. Baxter, who is the Assistant Attorney General in charge of antitrust.

Thank you for giving me the opportunity to testify.

Mr. **Bedell**. Thank you. Now we will hear from Mr. Columbus.

STATEMENT OF R. TIMOTHY COLUMBUS, COUNSEL, SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA

Mr. **Columbus**. Thank you, Mr. Chairman. In deference to you and the people in the audience, I will try to be mercifully brief. I have a statement which I would like to submit for the record and then I will summarize that.

Mr. **Bedell**. It will be entered.

Mr. **Columbus**. My name is Tim Columbus. I am here on behalf of my law firm Collier, Shannon, Rill & Scott's client, the Society of Independent Gasoline Marketers of America, which represents the private brand chain retailing segment of the motor gasoline industry.

The role historically of private brand marketers has been the cheap price competitors in the marketplace. Their importance to competition has been recognized by the Federal Government, no less recently than the spring, when the Federal Trade Commission itself intervened to block Mobil Oil Corp. acquisition of Marathon.

I will agree with a great many of the things Mr. Blum has said today, one of which is we recognize the decline in demand for motor fuels is going to generate some fallout in the industry. However, historically shakeouts in the industry have been based on economic efficiencies. Survivability has not been dependent upon the depth of a particular competitor's pocket. It is our particular concern that situation is precisely one that has developed today.

Specifically, the pricing practices of a number of major integrated oil companies in different parts of this country suggest those companies are focusing from our perspective their overwhelming economic resources on the retail market with the result that my clientele's marketing efficiencies are rendered irrelevant.

Now, the fallout from that, very simply, is that the segment of the motor fuels market which historically has been recognized as the most price competitive and the most efficient distribution system at the retail level is absolutely up against it. Companies that own their retail outlets in fee—they are not leveraged, have no debt, whose only fixed costs are utilities, labor and taxes—are unable in the context of these markets to recover their costs much less make a profit. Under those circumstances, my clientele has been put in the position of deciding when in the next 6 months to set up its liquidation schedule, and they obviously are concerned in the extreme.

As you, Mr. Chairman, and this subcommittee know, SIGMA has been very, very reticent about ever advocating the Federal Government's intervention in the petroleum products marketplace. That reticence has been based on an assumption that in a "free market" people maximize profit. Therefore efficiency becomes the determinant portion of the market's choice on who will survive and prosper and who won't. It appears that our assumption, vis-a-vis the marketplace, is not applicable to the market for motor gasoline in number of parts of this country.

Just in summary, let me say that it is our conclusion that the overwhelming economic resources of the major integrated oil companies are being employed in a highly uncompetitive manner and in a highly anticonsumer manner. Such behavior renders functional efficiencies, theoretically the determinant factor in economic survival, utterly irrelevant in the retail market for motor fuels. As a result, SIGMA is compelled to conclude that effective action, to limit the ability of vertically integrated companies to reallocate funds and profit opportunities amongst their functional levels, is appropriate.

SIGMA recognizes the enormous complexity of that task. I would anticipate that tomorrow you will hear from some of your witnesses that a charge of subsidization is invalid, that their financial sheets show that they are making money at each level of their operation. But when you have the kind of resources available to some of those companies, and when they make a decision—whether it be for tax avoidance or for other purposes—to reallocate profit opportunities, you simply don't have a market that makes efficiencies relevant. We would hope that this committee would certainly hear not only our complaints and our concerns, but also those of others.

With respect to specific solutions, I have talked to staff on a number of occasions and many of those specific solutions raise more problems than they solve. One possible way to look at this—and I agree with Mr. Blum—is some elimination of the prohibition on the sale of Alaskan North Slope crude to Japan, to create a viable market for that crude oil on the west coast, and another would be this subcommittee possibly looking at the idea of a transparency law. That is great in concept. I don't know how well it would work in practice. I know the Europeans have looked at such laws in which integrated companies are required well after the fact to disclose in great detail the particular economics of their functional levels. At least that gives an investigatory body an opportunity to see on the basis of financial performance what the motives and operating realities of that company were.

I thank you for this opportunity and I, too, will be happy to respond to any questions you might have.

[Mr. Columbus' prepared statement follows:]

PREPARED STATEMENT OF R. TIMOTHY COLUMBUS, COUNSEL, SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA

My name is R. Timothy Columbus. I am with the law firm of Collier, Shannon, Rill & Scott and appear today on behalf of our client, the Society of Independent

Gasoline Marketers of America (SIGMA). SIGMA is a trade association comprised of approximately 250 independent marketers and private brand chain retailers of motor fuels. SIGMA's members market motor fuels in 49 of the 50 states and their sales represent approximately 15 percent of the domestic retail market for motor fuels.

Private brand marketers, such as SIGMA's member, build their businesses on the basis of their marketing efficiencies at the retail level. Specifically, these marketers operate around the concept of high volume/low margin and succeed by minimizing the amount of fixed costs which must be recovered in the selling price of each gallon of motor fuels. This segment of the retail market historically has been the most innovative part of the retail industry, pioneering such cost-saving concepts as self-service. In short, SIGMA's members are widely recognized as being among the most efficient retailers of motor fuels in the world. Their role as the leading price competitors in the retail motor fuels market most recently was acknowledged by the Executive and Judicial branches of the Federal Government in the proceedings in which the Federal Trade Commission successfully sought to prohibit Mobil Oil Corporation from acquiring Marathon Oil Company, historically a leading supplier of motor fuels to private brand marketers. Their marketing efficiencies and aggressive pricing competition have made private brand marketers the best friend of cost-conscious consumers of motor fuels.

The private brand segment of the retail motor fuels market today faces the greatest threat to its existence which has been raised during this half of the century. The availability to private brand marketers of competitively priced products has been restricted severely. This fact, when coupled with the pricing practices of their major integrated oil company competitors, has rendered private brand marketers in many market areas incapable of competing, despite the superior marketing efficiences of the private brand segment. In short, conditions in large portions of the retail market have rendered the marketing efficiences of private brand marketers irrelevant. The rendering of efficiency irrelevant in the market strongly implies that other, more powerful participants in that market are engaged in behavior which is not only uneconomic, but ultimately predatory. Unless this predatory behavior is stopped, Congress can expect a significant change in the competitive structure of the retail market for motor fuels in which highly efficient participants in that market are eliminated by their more powerful competitors' abuse of their superior economic resources.

There is no question but that declining demand for motor fuels will result in some participants in the retail market being driven from that market. However, the market's decision regarding which participants will no longer be viable should reflect the efficiency with which competitors perform the functions involved in that market. The market's decision should not reflect only the relative economic strength of competitors with survival's being dependent upon the depth of a particular competitor's pocket. It is SIGMA's sincere concern that the current "shake-out" in the retail market for motor fuels bears virtually no relation to the efficiency with which particular competitors perform the function of delivering motor fuels to consumers. Rather, it appears that a number of major integrated oil companies have elected to purchase a share of the retail market by using revenues derived from upstream operations to subsidize or sustain their downstream operations.

As this Committee is aware, SIGMA historically and consistently has opposed the government's intervention in the petroleum market during periods in which normal "market forces are sufficient to insure competition based on efficiency. SIGMA always has believed, and continues to believe, that in a true "market," as that term is understood in the context of classic market-theory economics, rational economic behavior by participants in the market will provide adequate opportunity for efficient competitors to prosper. However, SIGMA also always has supported appropriate government action when conditions distort the marketplace in a manner which renders efficiency irrelevant. It appears that such conditions exist in today's marketplace.

During the past months, a number of major integrated oil companies have undertaken programs in which their overwhelming economic resources have been brought to bear on the retail market in a manner which renders efficiency in that market irrelevant. The primary source of this economic power is these companies' production of crude oil, the sale of which, if effected at market prices, provides them with the ability to subsidize their downstream operations. If the internal transfer of such crude oil is effected at below market prices, the result is the same by providing the companies' downstream operations with an artifical and insurmountable cost advantage. Thus, it is irrelevent whether a company actively "subsidizes" its downstream operation, i.e., maximizes its profit at the production level and employs this profit to support unprofitable marketing operations, or simply foregoes profit at one level to realize it at another level. Either practice has the practical effect of rendering non-integrated competitors, regardless of their efficiencies, incapable of effective competition. Pursuit of either policy by the major integrated companies reflects a predatory intent and justifies close government scrutiny. This scrutiny is particularly appropriate when government action provides certain competitors with very significant advantages which appear to have been employed in an anticompetitive manner.

The prices charged by certain major integrated oil companies for gasoline appear difficult to understand, given the market for crude oil and the costs of refining and distributing crude oil and its products. The only possible explanation for such prices appears to be that these companies are either subsidizing their downstream operations or internally transferring crude oil at price levels well below that crude oil's alternative market value. Under either scenario, the companies involved appear to be foregoing substantial profit opportunities. If the corporations which constitute the major oil companies were organized to be altruistic enterprises, then SIGMA, as well as the nation, could sit back and applaud their laudatory behavior. However, these corporations were not organized for altruistic purposes. Thus, behavior which strongly suggests that these companies are not maximizing profit, compels the inference that such behavior is undertaken with a motive and in the context of a plan to maximize profit at a subsequent period. Because of the highly competitive nature of the retail motor fuels market, subsequent maximization of profit only could be accomplished if competition were reduced significantly. SIGMA fears that, if unabated, the current marketing practices of a number of major oil companies, whether or not so intended, will result in just such a reduction in competition.

Some of the companies, about whose marketing practices SIGMA is most concerned, are significant producers of Alaskan North Slope (ANS) crude oil. The method by which ANS crude oil is taxed under the Windfall Profit Tax Act unquestionably is advantageous and was intended to be so by the prior Administration. However, the advantages provided ANS producers were not intended to be employed to support and enhance those producers' downstream operations. Nevertheless, it appears that this unintended result has been realized. Certain ANS producers have undertaken marketing programs, the economics of which can be justified, if at all, only by the advantages which they enjoy under Internal Revenue Code. To the extent that tax incentives are employed in pursuit of the objectives for which they were created, SIGMA can have no complaint. However, when such advantages are employed as a significant competitive weapon, SIGMA must object.

In summary, it is SIGMA's conclusion that in a number of instances, the overwhelming economic resources of the major integrated oil companies are being employed in a highly anticompetitive and ultimately anticonsumer manner. Such behavior renders functional efficiencies, theoretically the determinant factor in economic survival, utterly irrelevant in the retail market for motor fuels. As a result, SIGMA is compelled to conclude that effective action, limiting the ability of vertically integrated companies to reallocate funds and profit opportunities among their functional levels, is appropriate. SIGMA recognizes the enormous complexity of such a task. However, market conditions during the past months strongly suggest that absent such action, the structure of the retail market will be irrevocably altered without any consideration for the economic and competitive structure consequences of that alteration.

SIGMA appreciates this opportunity to express its views with respect to these matters. I will be happy to respond to any questions which my testimony may have raised.

Mr. **Bedell**. Thank you very much, Mr. Columbus.

Mr. Blum, I need to understand a little more about the Alaskan crude. There are a number of companies that have Alaskan crude, as I understand it——

Mr. **Blum**. Three, principally: Arco, Exxon, and BP. [Note: British Petroleum is the majority stockholder in Standard Oil of Ohio.] There are a number of other smaller stockholders up there, but those are the three that hold the lion's share.

Mr. **Bedell**. It is your opinion, apparently, that Arco is charging more for transportation than they legitimately should.

Mr. **Blum**. They are charging more for transportation, for example, than Exxon, by almost a dollar. Exxon is limited by a consent decree and their tariff rates have been in the $5.26 to $5.30 range. I don't recall offhand. I can supply the number for the record, but they have been charging themselves much more.

If you look at that financial analysis that I gave you, on the third page, first side—it shows that for the 3 months ending September 30, 1982, the profitability of the company breaks out as $585 million for exploration and production, $192 million for transportation, and $277 million for refining and marketing, which makes transportation, which ought to be a tiny fraction of the overall profit, a very large percentage.

[See appendix H for material referred to above.]

When I say it ought to be a tiny fraction, FERC yesterday, in its opinion, said that transportation costs were negligible next to the cost of product, so FERC really didn't have to pay attention to pipeline rates. This kind of profitability layout suggests that the pipeline rates are rather critical.

What I'm saying about them—and this is the key point—pipeline rates become a deduction from the calculation of the windfall profits tax, and the higher you push your pipeline rates and the higher you push your ocean freight, the lower your windfall profits tax. So, go to the bottom of that page. The adverse impact, reads this report, the lower realizations for crude was substantially cushioned by a steep decline in windfall profits tax from $292 million to $194 million. While Arco's wellhead price for Prudoe Bay crude fell about $2.10 a barrel, the net value shrank by 18 cents. So what's happening is, they are in a situation where they are cutting the price of crude and, in effect, making up the difference on the tax and knocking everybody else who can't play the game that way into a cocked hat. We don't think we ought to be forced to sit still for it.

Mr. BEDELL. Don't you have legal means to——

Mr. BLUM. Well, we can't get at their tax returns. We are trying to make ourselves heard at FERC, but that whole matter is almost a closed issue at FERC. None of us understood how critical it was because up to the period of decontrol this didn't turn up the way it is turning up now.

As far as the rest of the Government is concerned, we are in a Government that doesn't believe in competition and thinks that vertical integration is fine, and all of this stuff is terrific. So we have got to have some help here and we have got to have some help from Members of Congress in getting focused on it.

We think, for example, if taxes were properly collected and this windfall profits tax were straightened out, collections would go up over $1 billion a year.

Mr. BEDELL. I would feel a little more comfortable if you had said the administration believes this rather than the Government believes this, but that's all right.

Mr. BLUM. Oh, I am very secure about this body.

Mr. BEDELL. According to this table you have given us, it would indicate that their windfall profits tax has been cut about in half for the 9-month period.

Mr. BLUM. Their payments are down by about half, yes.

Mr. BEDELL. Do you know what their volume is?

Mr. **Blum**. I really can't give you the kinds of detail. There are some numbers in here about what their volume has been. We know they have increased their production on the North Slope, and there has been an intercompany arrangement up there in which an additional portion of the production has been turned over to Arco.

Now, there are several other things that have to be——

Mr. **Bedell**. How does that work?

Mr. **Blum**. I am not sure how it works because I'm not privy to the contracts, but I can tell you this: When the arrangements were first made, the Department of Justice had a major investigation and they, in effect, decided not to sue them, but to focus on the TAPS tariff case because they said everything would be wonderfully competitive as long as FERC controlled the rate on the pipeline. Now we have virtually no control of the rate on the pipeline by FERC, so we have what I believe to be a totally noncompetitive arrangement up there. I do not know how those portions of production were switched around, but I don't think those three companies should be making those switches around.

Mr. **Bedell**. You know that now apparently it is $6.04 a barrel that they are charging for transportation?

Mr. **Blum**. Yes.

Mr. **Bedell**. Do you know what they were charging a year ago?

Mr. **Blum**. I can't tell you. I think it may have been the same amount, but now there are intercompany transfer prices for ocean shipping from Valdez south. There is the final transfer price question, all of which cut in on the question of windfall profits tax.

The reason the windfall profits tax liability went down is, for whatever reasons, transportation costs or otherwise, the wellhead price was down and the wellhead price is the key determining factor in the windfall profits tax liability. It is complicated, and I think worth further study.

Mr. **Bedell**. I thought I understood you to say that if they charged more for transportation they can lower the price of crude and still have the same amount of money as they net at the end.

Mr. **Blum**. In effect, the savings come out of the Government. Even though the crude price has gone down, the person who bears the brunt of that, the entity that bears the brunt of the decrease in crude prices is the Treasury.

Mr. **Bedell**. Are those figures available as to what they have been charging or what they charge for their ocean transportation?

Mr. **Blum**. I suggest you ask them tomorrow. We haven't seen them, and I would certainly think it would be a matter you would be curious about. I think you would want to see a complete layout of how these charges are assessed, and just how they do their calculation on windfall profits.

I think they pay relatively less windfall profits tax on their crude than almost anyone else, and it is because of the method of calculation.

Mr. **Bedell**. Gosh, we're talking about a lot of money, aren't we?

Mr. **Blum**. We sure are, and that is why we're being driven out of business. At 99 cents on the street in Los Angeles, they are selling gasoline for less than the world market price of crude oil. If they want to cut the price of crude oil, we are just perfectly happy to have them do it, because we will buy it from whatever refiner refines it. What they are doing is, they are cutting the price of crude oil, staying very profitable by saving tax money, and driving their selected worst competitors from their point of view out of business. I think that's intolerable.

Mr. BEDELL. You are also saying that on the Alaska pipeline that people don't know how the crude oil from that is allocated to the three different—there are more than three, are there not?

Mr. BLUM. There are more than three. I should say there is an arrangement, a unitization going on in the field, and there are contracts among the producers with respect to offtake and how that is all made up, and in all probability this material was given to the Justice Department at the time of the initial investigation but I think in light of what has developed it bears a careful reexamination.

Mr. BEDELL. Because they are not available?

Mr. BLUM. I haven't been able to get them.

Mr. BEDELL. Your testimony states that the availability to private brand marketers of competitively priced products has been restricted. We heard this from our last group, I guess. I guess, Mr. Columbus, you would be the one to ask about that.

Mr. COLUMBUS. Yes, sir. Very simply, in particular markets the availability of competitively priced product is nonexistent for a great number of our members. A competitively priced product is obviously a relative number. When you are faced with a major integrated oil company that is fairly highly concentrated in a particular area, and that company appears to be charging prices, we are hard pressed to get back to the price of crude oil, much less the price of crude oil increased by costs of refining and distribution. We can't buy product from our suppliers who are not taking that kind of action and hope to meet our competitors on the street.

We are also informed that some of the companies about whom I am talking have been fairly heavily into the spot market for product. Their pricing practices have generated such a demand that their own refineries are incapable of yielding enough product to meet that demand. Under those circumstances, it appears to us that those companies are entering the spot market, buying in bulk at a price, and reselling that product through their system at a price significantly below the price which they paid for it.

That has two effects on a private brand marketer. One, obviously he must meet that price on the street, and two, by drying up the spot market, it makes less product available and the competition for his business obviously declines.

Mr. BEDELL. The question I was going to ask originally was that apparently Arco's profits have increased substantially.

Mr. BLUM. That's correct. They are selling way below what appears to be the world market price. So what we calculated, if they closed their marketing and closed their refining and sold their crude oil at world market levels, they would make more money. That tells me something is radically wrong with the marketplace. We have to take a very fresh look at what is going on.

Either the price of crude oil is way too high worldwide—and it may be, in which case there is no competition at the crude level—or the price of product is way too high worldwide, and Arco knows and has lowered it wisely, in which case there is no competition at the product level, or there is somebody who is helping this thing along. I frankly am open to discussion about any of the hypotheses. I know I have a bunch of guys who are going broke.

Mr. **Bedell**. What do you think we ought to do?

Mr. **Blum**. I think the first step is asking a lot of questions, and I hope that tomorrow you will be asking a lot of questions about precisely this point.

I think it may mean developing further questions about how this market is functioning, the tax side of it as well as the competitive side of it, and I think you have got to get the Federal Trade Commission in here and you have got to get the Antitrust Division in here and tell them about what the law is as the way it was passed by Congress and what your view of it is so that at least they don't laugh at us when we ask for some help.

Mr. **Bedell**. We have done that and they laugh at us.

Mr. **Blum**. They have laughed at you, too?

Mr. **Bedell**. Yes.

Well, we appreciate your testimony very much. I understand we do have representatives from the majors here today, so I presume they will be ready to answer these questions when we get them here tomorrow. We appreciate your testimony very much.

Mr. **Blum**. Thank you.

[See appendix L for additional comments by Mr. Blum.]

Mr. **Bedell**. The hearing is adjourned.

[Whereupon, at 1:10 p.m. the subcommittee adjourned, to reconvene subject to call of the Chair.]

GASOLINE MARKETING SINCE DECONTROL

THURSDAY, DECEMBER 2, 1982

House of Representatives, Subcommittee on Energy,
Environment, and Safety Issues Affecting Small
Business, Committee on Small Business,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:37 a.m., in room 2359-A, Rayburn House Office Building, Hon. Berkley Bedell (chairman of the subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN BEDELL

Mr. Bedell. The subcommittee will come to order.

Today the Small Business Subcommittee on Energy is conducting the second of two oversight hearings on the subject of gasoline marketing since decontrol.

The purpose of these hearings is to gain a better understanding of changes that occurred in the gasoline marketplace in the past year and a half and to learn what is going on currently in this complex and controversial area.

Yesterday we heard quite a bit of testimony from representatives of various marketer groups. These witnesses provided us with a great deal of information, but they also raised a number of questions in the committee's mind. Perhaps today's witnesses can help us resolve some of those questions.

Our first panel of witnesses this morning will consist of representatives from several different jobber groups. Then we will hear from five of the major oil companies. We have placed Arco and Texaco first, as we had heard a great deal about those companies in yesterday's hearings, and the chairman suspects they are anxious to respond.

Again, we must observe firm limits on the length of all witnesses' initial remarks to allow time for dialog. We will encourage all witnesses to summarize as much as possible. We have asked them to hold their time to no more than 10 minutes. At least yesterday everyone complied very well with this proposal.

Our first group of witnesses are Robert Thornhill, president-elect of the National Oil Jobbers Council from Fort Wayne, Ind.; Bill Bailey, president of the Texas Oil Marketers Association from Austin, Tex.; and L. L. Wright, Illinois Petroleum Marketers Association, from Vernon Hills, Ill. If you folks would come up to the table here.

We are pleased to have Congressman Charlie Stenholm with us today. I think he wants to introduce one of the witnesses. I would like to have you add anything else that you might be interested in adding.

Charlie?

OPENING STATEMENT OF HON. CHARLES W. STENHOLM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. **Stenholm**. Thank you, Mr. Chairman, very much. I appreciate the courtesy you have extended to me in allowing me to sit in this morning, particularly to introduce one of the first witnesses.

I commend you, Mr. Chairman, for holding these hearings and attempting to bring about a focus on the problems that we have heard discussed in what I believe to be a continuing and growing problem as we focus in on the many difficulties we have experienced in the energy business and as we look ahead to the future, what I believe to be a continuing and growing problem.

I think you are to be commended for holding these hearings, to attempt to get some of the questions answered, to focus in on the problems to see if there are in fact solutions, particularly as they affect the small business community.

I thank you for allowing me the privilege to be here, and particularly I am pleased to introduced a fellow Texan, Bill Bailey of Jacksonville, Tex. Bill is not a constituent of mine, but he said the magic words a moment ago in that he seems to be involved in some business endeavors out in the 17th District and has been spreading a little south Texas money out in west Texas. I didn't know that when I agreed to introduce you, Bill, but now I guess I am even more pleased to have done this.

Besides serving as chairman of the board of Carr Oil Co. in Jacksonville, Tex., Bill is now the president of the Texas Oil Marketers Association, which represents some 800 companies in the State of Texas in attempting to deal with those problems that are associated with the branded and unbranded service stations and those companies who attempt to deliver in the most efficient manner possible a supply of fuel to the people of the State of Texas.

Mr. Chairman, with that I am happy to introduce Bill Bailey. He is accompanied at the table by Dave Fellers, who is the executive vice president of the Texas Oil Marketers Association.

Bill and Dave, welcome.

Mr. **Bedell**. Thank you. We are glad to have you with us.

Mr. Thornhill, would it be all right to let Mr. Bailey go first since he has already been introduced?

You go ahead, Mr. Bailey.

PANEL CONSISTING OF BILL H. BAILEY, JR.; ROBERT J. THORNHILL; AND LESTER L. WRIGHT

TESTIMONY OF BILL H. BAILEY, JR., PRESIDENT, TEXAS OIL MARKETERS ASSOCIATION; ACCOMPANIED BY DAVE FELLERS, EXECUTIVE VICE PRESIDENT

Mr. **Bailey**. Thank you. Mr. Chairman and committee members, I am Bill H. Bailey, Jr., president of the Texas Oil Marketers Association.

TOMA is headquartered in Austin, Tex. and represents more than 800 firms that are distributors of petroleum products. Our members supply two-thirds of the service stations in Texas, as well as the vast majority of commercial, agricultural, and energy product accounts.

We have provided you with a very comprehensive outline of the problems confronting our members. In the interest of time I will not read you the entire 41-page prepared statement but will summarize the information we have documented for this committee. In order to give you specific information about our members and the impact of refiner policies on them, TOMA conducted a survey of our membership in October. The survey substantiated our fears about the financial plight of our membership.

Although a majority of our members showed a profit in their most recently completed year, 64 percent state their financial position has declined drastically. Our survey explains why since it points out that the average wholesale margin in Texas is 5 cents less than is necessary to break even. The retail margin is one-half cent below the break even point.

Our members are suffering, and they have been taking drastic steps to reduce their overhead and increase their efficiency. Over 50 percent of the jobbers in Texas have reduced employees, 57 percent have frozen salaries, and 45 percent have closed service stations.

Despite this, we estimate that 10 percent of our members have gone out of business, either through bankruptcy, mergers, or have just closed their doors.

While Texas jobbers are showing a substantial decline in their financial position, refiners' domestic crude oil profits have nearly doubled. Also, the latest reports on 9-month earnings for 1982 show record profits in marketing and refining for such companies as Exxon, Gulf, Shell, and Amoco. These are the very companies that our survey indicated are using unfair policies to compete in the marketplace.

Of our members, 80 percent indicate that they are confronted with unfair competition at the retail level, with major refiner direct outlets perceived as the main unfair competitor. The refiners who have been most frequently listed as unfair competitors include Exxon, Texaco, Gulf, Shell, Mobil, and Conoco's secondary brands, Fas Gas and Jet. The extremely low prices posted by refiners at the retail level, combined with the high rack prices that they establish for our jobber members, have resulted in the reduction or elimination of the jobber functional discount.

The term "jobber functional discount" encompasses many aspects of the jobbers' business which has historically earned the marketed a lower buying price. We clearly outline these in our testimony. Some oil companies, such as Shell Oil and Exxon, imply that jobbers are not entitled to a functional discount. Yet our survey documented that it is the oil companies who are controlling the marketplace and, as a result, setting margins for the jobbers.

The testimony we have provided you documents that the prices that refiners post in metropolitan areas do indeed affect retail prices across the State. Of our membership, 85 percent said price postings in metropolitan areas affects the prices they post in rural areas. They affect them from as far away as 280 miles.

In Texas, people commute from rural areas to metropolitan areas for work, shopping, and entertainment. If they drive 60 miles to shop in Houston and see a posted price of $1.06, they wonder why the same branded station in their hometown posts $1.10. Unfortunately, the higher jobber buying price often makes it almost impossible for him to post the lower price and stay in business.

It might help to give you an example of discriminatory pricing. One Exxon jobber on November 19 bought at rack price of $1.0165 for regular gasoline. The price Exxon charged their direct-supplied dealers in the Houston area was $1.02. That is less than a half cent differential between the jobber and the dealer cost, effectively eliminating the jobber functional discount.

Exxon is not the only refiner to provide this preferential pricing treatment for their direct-supplied dealers. Our survey indicates that 74 percent of our members feel that preferential treatment is being given to refiner dealers. Gulf, Shell, Exxon and Mobil were also mentioned as having reduced differentials between jobbers and dealers, a move designed to gain direct control of the gasoline they refine and sell. Some refiners, such as Texaco, Shell and Mobil, have enhanced this direct control by providing dealers with substantial rebates while not offering any incentive programs to jobbers. Chevron offers cash incentives to direct-supplied dealers to stay open longer hours, but nothing to jobber stations. While many refiners provide their direct dealers with free signs, free painting, and maintenance, they have eliminated them for jobbers.

Allocation of product is another area of inequity. In May and June most refiners were limiting the amount of product jobbers would purchase, while allowing direct dealers to buy all they wanted. Lately, we have seen refiner actions that can be interpreted as an effort to drive jobbers out of business.

Our members have traditionally served the vast majority of commercial accounts. Recently, 59 percent of our members state they have experienced refiners taking over their commercial accounts on a direct basis, often selling to that account at less than the jobber's buying price.

Gentlemen, you may begin to question what the free enterprise system is all about when your own supplier sells to a commercial account at, near or below your cost. Let me give you an example: I have an invoice from Texaco to Sears & Roebuck in Dallas, Tex., where the oil company sold diesel fuel to them on Oct. 19, 1982 for 93.5 cents per gallon, delivered. On that same day, the jobber buying price for diesel fuel was $1.005, 7 cents more than Sears.

As of yesterday I was told that Texaco had secured a contract with two service stations at naval bases at Corpus Christi and Beeville, and their price was 5.75 cents below dealer tankwagon price for about 100,000 a month, on a 1-year contract. It makes you wonder. Despite the fact that our average member has been in the business for 24 years and that some have been affiliated with their refiner for more than 50 years, some suppliers will take advantage of us in any way they can.

We have tried to warn the direct-supplied dealers that they will be next, and we are already seeing movement in that direction. In El Paso, Exxon has one direct outlet and 12 direct-supplied dealers. The company 2 weeks ago reportedly lowered its price to $1.079 at the direct outlet. The dealer tankwagon price was reportedly $1.061, less than a 2-cent differential. Even with the special treatment those dealers are getting, they cannot survive on a 2-cent margin.

Mr. Chairman, committee members, many of the areas I have discussed have been unfair and obviously discriminatory. One of the highhanded tactics of the oil companies has to stand out above all as being disgraceful.

Hundreds of Exxon, Texaco, Mobil, Conoco, and Gulf former consignees have invested an average of $195,000 at interest rates of up to 21 percent to become jobbers. These are former businessmen who worked for the refiners on a commission but were encouraged by the oil company to buy their bulk plants and rural service stations and become independent jobbers. I personally believe that many of these refiners fully realized that these small businessmen would not be able to survive. After all, the refiners took the millions of dollars they received from these individuals and used them to build new service stations that are now destroying the former consignees' ability to compete.

TOMA's survey also documented the impact of other refiner actions since decontrol. Of our members, 81 percent had increased costs as a result of the elimination of their hauling allowance and adoption of terminal pricing, and 80 percent of our members found these new policies detrimental to their business, while only 5 percent found it good and 15 percent felt no impact.

One of the more significant changes in respect to costs incurred by marketers and consumers has been credit card surcharges. Phillips, Mobil, Conoco, Cities Service, Gulf, Chevron, and Kerr-McGee now charge their jobbers and dealers a surcharge on their branded credit cards. Historically, branded jobbers have understood that one of the reasons they pay a higher price was because of the credit card program. The November 5 Lundberg survey reflects the average self-service leaded gasoline price in Houston was 1.069. If a jobber pays 3 percent for a credit charge surcharge, that amounts to 83 percent of the margin on each gallon of gasoline. Marketers are trapped. They cannot afford not to accept the cards, but the expense of honoring them costs the average Texas marketer over $45,000 per year.

According to our survey, only 17 percent of the surcharge assessed to our members has been passed on to the consuming public. A total of 40 percent has actually been absorbed by our members. Of the surcharge 43 percent has been passed on to service dealers, which, in all honesty, places additional financial pressures on them. Some of the major oil companies have tried to camouflage these surcharges by calling them "discounts for cash" programs. Our survey shows that this has not worked. Of the consumers 52 percent have an unfavorable reaction to the discount for cash or credit card surcharge, while only 15 percent had a favorable reaction.

In our membership 69 percent feel that the discount for cash program has not benefited the consumer but is simply a method for the refiners to increase their profits at the expense of the jobbers, dealers, and the consumers they serve.

Let me digress from my prepared text for a moment. Just before coming up here I took a look at my own business, and out of 44 service stations I had 8 service stations that were directly affected by the surcharge. The volume of those eight stations represents 7 percent of my total volume. For the month of October, I paid $8,660 to those supplying companies on the surcharge fees. This projects out to be a little over $100,000 annually for my business. I didn't pass any of this on to the consumer for obvious competitive reasons: I was competing against some of my own suppliers.

In summary, let me review just what happened since decontrol: 64 percent of our members' financial positions have declined; margins are below the actual break-even point. Of our membership 56 percent have experienced a decrease in gallonage sales. Refiners have discontinued hauling allowances, and many have instituted credit card surcharge programs. Refiners have lowered or eliminated jobber discounts.

The latest movement we are seeing is by refiners, such as Mobil and Exxon, attempting to coax their jobbers into allowing the refiner to draft payments directly from their bank accounts, a move that will force marketers to borrow money to cover these payments. At the present interest rates, it is another unbearable expense.

Gentlemen, although our survey indicates a preference for retail divorcement legislation, TOMA feels an obligation to exhaust every effort to resolve our differences without legislative action. Our recommendation is for this committee to use its prestige and authority to persuade the major oil companies to treat marketers with fairness and equity. You must demand that the refiners rescind their predatory policies and practices and restore fairness to the marketplace. You must demand a full explanation of the steps they will take to correct the inequities. You must urge the Federal Trade Commission and Department of Justice to closely monitor and investigate their actions.

We met yesterday afternoon with Dave Brown, the Department of Justice, and I think he would be receptive to working with you.

Congressmen, if the major oil companies refuse to run their business in a manner consistent with the interests of small business and the consuming public, this committee should be prepared to promptly pursue legislation specifically designed to correct the subsidization and predatory practices so prevalent today.

[Mr. Bailey's prepared statement follows:]

PREPARED STATEMENT OF BILL H. BAILEY, JR., PRESIDENT, TEXAS OIL MARKETERS ASSOCIATION

TEXAS OIL MARKETERS ASSOCIATION SEEKS EQUITY IN THE MARKETPLACE

Mr. Chairman and honorable members of the Small Business Energy Subcommittee, the Texas Oil Marketers Association has often appeared before federal hearings and discussed the plight of our industry. Today is different! Although our previous comments on regulations, legislation or industry problems have been sincere, we come before you today in desperation.

This is not our first time to express concern over refiner actions. A year ago, we appeared before the Texas Congressional Delegation and outlined concerns about anticipated refiner actions as a result of decontrol. We returned to Washington last May to update our congressmen on a frightening trend that was developing in our industry. Since May, the magnitude of our problems has significantly increased.

Our appearance here today is one of last resort, not an immediate attempt to turn to the government for help. We have tried to resolve our problems by working with refiners, but they have failed to respond to our pleas for fairness and equity in the marketplace.

Let me first put our situation into perspective. TOMA is the largest state oil marketing association in the country, with a membership of more than 800 small independent companies. These firms supply branded and unbranded chains of service stations, as well as the vast majority of agriculture, commercial and energy production accounts in Texas.

Since January, 1981 the oil industry has rapidly undergone a massive transition from a highly regulated marketplace during government controls to the intensely competitive scramble for market share experienced today.

For oil marketers who have continually experienced shrinking sales as a result of conservation in America, many of the policies refiners have instituted in response to these and other market changes have signaled potential disaster. Some may contend that the demise of the estimated 1,000 marketers' businesses that have fallen to mergers or bankruptcy since decontrol was simply prolonged by governmental intervention. We believe that our testimony today will show that the vast majority of these small businesses were forced out of the marketplace as a result of unfair marketing practices and discriminatory actions by major oil companies.

You will find our testimony is more than simple accusation or rhetoric. The Texas Oil Marketers Association has prided itself through the years in documenting its testimony, and we have facts and figures available today to show the impact on our membership.

Before I get into these specific areas, let me stress that we are not here to ask you to resolve all of our problems and we do not expect you to legislate a place in the market for jobbers and retailers. What we want is equity -- fair pricing, a cessation of predatory pricing by refiners, and some continuity in business practices by the refiners. Although they deserve the right to make a profit, it should not be with the use of a heavy hand at the expense of their jobber customers and the consumers they serve.

GENERAL ECONOMIC CONDITION OF MARKETERS

In order to give you a better understanding of the marketers we represent, TOMA would like to review some general information about our members. This is taken from a survey conducted by the association in October, 1982, with responses received from more than 25% of our membership, representing firms that buy gasoline and diesel fuel from 20 different suppliers.

Types of Marketers Represented by TOMA

According to our survey, 48% of the respondents market predominantly in rural areas, while 28% operate in urban, 13% in metropolitan and 11% of the respondents have outlets in all of the areas.

The vast majority of our members are very small businesses; 19% sell less than 1 million gallons of gasoline and diesel fuel annually, while 14% sell 1 to 5 million gallons, 45% sell 5 to 10 million, 15% sell 10 to 20 million and 7% sell over 20 million gallons of gasoline and diesel.

Most TOMA members are branded marketers, which means they have a contract to buy from a major oil company and use that brand at their service stations. Our survey showed that 73% are predominantly branded jobbers, while 3% are unbranded, 15% market through both branded and unbranded outlets and 9% consider themselves convenience store chains that also sell gasoline.

Petroleum marketers are totally independent businessmen who perform numerous functions in the marketplace. It has always been widely recognized that a major oil company could not supply service stations, commercial users and farmers as economically and efficiently as small businessmen who live and are active in the community they serve. Our average member has lived in his community for 31 years, and worked in the oil marketing business for an average of 24 years. Approximately 47 people are dependent upon an average member's business for their livelihood -- that is more than 37,000 Texans.

More than 40% of these businessmen have served or are currently serving in their cities' government; 28% are on the board of a bank or savings and loan, and an average member contributes to at least five different charities and non-profit organizations. TOMA members are important to their communities, both from a business and civic standpoint.

Functions Performed by Oil Marketers

To give you an idea of the functions our members perform in the marketplace, our survey documented how many of the companies are involved in the various aspects of petroleum marketing. The following are the results:

83 % operate a bulk plant (storage facility for gasoline and diesel fuel with a warehouse for oil products and tires, batteries and accessories) with the average capacity of petroleum storage tanks being 101,674 gallons.

76 % supply service station dealers directly from his bulk plant, with the average number of stations being 10.17.

66 % supply service stations by delivering direct from the refinery to terminal where they pick up the product, with average number being 10.42.

62 % own gasoline transport trucks, with the average company owning 23 trucks

86 % own bobtail delivery trucks (smaller delivery trucks with an average capacity of 1,500 gallons), with the average company operating 2.6 bobtail trucks.

93 % supply commercial accounts with the average number of accounts per company being 63.3.

81 % supply agriculture accounts with the average number of accounts per company being 104.6.

50 % operate direct outlets (service station outlets or convenience stores operated by employees of the marketer) with the average number of stores per company being 5.53.

62 % supply independently owned convenience stores, with the average number being 9.22.

70 % carry credit for dealer accounts, which means they provide the dealer with petroleum products to sell at a service station, but allow him a certain time period to make payment for the product .

92 % carry credit for commercial and farm accounts, which means they deliver the product for use by the customer, but allow them a certain time period to pay for the product

Other functions our members perform include: Carrying lubricant inventories to provide immediate stock to commercial accounts; providing an inventory monitoring service for customers to prevent inventory shortages and run-outs; checking dealers' pumps weekly to verify computers; serving as equipment consultant for dealers who prefer to own their equipment; assisting in dealer maintenance programs; furnishing and maintaining dealer and commercial account equipment where feasible, and aiding in dealer financing.

Refiners' Actions Reduce Functional Discount

The services that jobbers provide and the functions they perform have changed very little in the past 10 years. Although some jobbers have been forced to move into direct marketing in order to compete with refiner outlets, the vast majority continue to serve the petroleum needs of all types of customers. One of our greatest concerns is a move by refiners to eliminate or reduce the "jobber functional discount" through discriminatory pricing policies.

The term "jobber functional discount" encompasses many aspects of the jobber's business which have historically earned the marketer a lower buying price. The jobber functions described earlier, such as bulk plant operations and carrying credit for various types of accounts, point up the fact that the marketer has made a substantial financial investment to market product under a supplier's brand name. Typically, he buys product in greater volume from the refiner; he owns his own transport trucks to make direct deliveries to retail and commercial accounts; he has invested heavily in the real estate for service stations and other operations that contribute to the important, overall brand image of a supplier. These are functions that a major oil company would perform, if supplying the account direct. The refiner has traditionally paid for these services by discounting each gallon of product sold to a jobber below the price charged to dealers.

What was established, then, because of the jobber's function versus that of a dealer in the marketplace, was a jobber price and a dealer tankwagon price. A service station dealer does not perform the above functions and thus does not need the margin to pay for those expenses. In many cases, the only investment a dealer will have are the tools for use in the stations' bays.

Throughout our testimony, we will point out how refiners have effectively reduced the jobber functional discount over the past decade, with most reduction occurring since decontrol.

To give you an idea of the changes experienced in wholesale margins, we asked our members to document their margins for the past ten years. The survey showed that in May, 1973, prior to the implementation of controls, the average wholesale margin was 4.82¢ per gallon. In May 1978, it was 5.53¢ per gallon. In December, 1980, one month before the end of controls, it was 5.77¢ per gallon. In October of this year, the average wholesale margin declined to 4.88¢ per gallon.

As Profitability Declines, Marketers Reduce Overhead

The impact of this margin reduction has been substantial. According to our survey, 21% of our members did not show a profit in their most recently completed fiscal year, while 7% only broke even. When asked if their financial position has changed since decontrol, 64% stated it had declined, 16% stayed the same and only 20% said it has improved.

I must explain that the financial burden placed on our members may not be truly reflected above. The reason for this is that many of them have been suffering financially as a result of changes in refiner marketing policies and have cut services and costs in order to stay in business. Our survey determined that our members have recently taken the following steps to reduce their costs and expenses in order to survive:

52% of our members have reduced employees 22%

57% have frozen salaries or reduced them
33% have sold equipment
45% have closed stations, with the average number of
    closed outlets being 3.3
28% have sold stations
61% have upgraded good outlets
34% have invested in a diversified business

Many members have attempted to increase their volume by upgrading good outlets and closing inefficient ones. This is difficult in a period of decreasing consumption, and the survey showed that 56% had experienced a decrease in gallons sold since decontrol, with the average decrease being 20%. During the same time frame, 28% experienced an increase in their sales of gasoline and diesel, and the average increase in sales amounted to 28%. The survey also noted that 16% have experienced no change in gasoline sales.

Suppliers Leave Consignees With Large Investments

One segment of the membership that has experienced extreme difficult financial burden are the thousands of former commission agents who were converted to jobbers by the major oil companies. Formerly, the major oil companies owned many bulk plant facilities and service stations in rural areas. They paid individuals known as consignees or commission agents a "commission" to manage the bulk plant, keep the service stations supplied and supervise them. During the past ten years, refiners have been retreating from their former investment in rural areas by offering to sell the bulk plant and stations to the consignee, making him an independent businessman -- a jobber. Hundreds of consignees have been converted in Texas by such companies as Texaco, Exxon, Gulf, Mobil and Conoco.

According to our recent survey, the average investment for a consignee to become a jobber was $195,000,at an interest rate ranging from 6% to 21%.

These consignees went to their local bankers and told them of their opportunity to become independent businessmen. Reports we have received indicate that some of the supplying company representatives encouraged consignees to convert and helped them determine a payout for their loan based on the margin they would be receiving at the time they purchased the business,..a margin of 3-6 ¢ per gallon, according to our survey. These same refiners now openly admit that these small businessmen cannot survive in the predatory market the refiners have created. We truly believe that many of these suppliers were fully aware and even incorporated into their five year plans that these individuals would be forced to liquidate their property at discounts, if at all.

Today, many of these consignees have closed or are on the verge of bankruptcy. Their margin at this time is from 1 - 5.4¢ per gallon -- a decrease from what they projected their payoff to be.

Some might say that competition is responsible for reducing their margin. We believe the facts we will present today show that the major oil companies have reduced the jobber margin through discriminatory pricing and unfair competition. The refiners sold off unwanted assets to their consignees and jobbers,converting millions of dollars they received from these businessmen into enormous investments in new service stations that are now ruining the consignee's investment through predatory pricing.

Refiner Pricing Policies Dictate Margins That Will Force Bankruptcy

This part of our testimony has provided a brief overview of the financial plight of our membership. It can be summarized by reporting the current existing margins of Texas marketers and how those compare to what these firms require just to break even. According to our survey, a typical wholesale marketer requires a 4.93¢ per gallon wholesale margin in order for his company to operate on a break even basis. By wholesale margin, we are referring to the difference between the price the jobber pays the refiner and what he charges a dealer or commercial account. In our survey, the average marketer was receiving a wholesale margin of 4.88¢ per gallon -- .05¢ less than what a firm needs to break even.

Those marketers who serve both the wholesale and retail functions by directly operating their service stations, stated they require an average rack to retail margin (the difference in the marketers' buying price and the cost to the consumer) of 7.85¢ per gallon. Yet, their average margin in October was 7.3¢ per gallon, with margins as low as .01¢ per gallon and an average low of 4.7¢ per gallon.

MAJOR OIL COMPANIES ELIMINATE FAIRNESS AND EQUITY

We cannot survive much longer under these conditions. It may be hard for someone to understand why a business would sell at a price that does not provide a reasonable return on their investment. But, those people don't have to market against the major oil companies -- companies that not only set the jobber's buying price, but also set their retail price by competing against them.

Refiners Can Subsidize Retail Profits With Crude Profits

Let me give an example of what our members are up against. The refiners own enormous amounts of crude oil and producing interests. They can make a substantial return on every gallon of gasoline they sell because of a large profit on crude oil -- even if they sell the gasoline or diesel fuel they have refined at or below cost. The more gasoline they sell, the more crude oil they use and the more profit they make in that portion of their business.

The oil companies know they are making money on their crude oil every time they sell a gallon of gasoline, so they decide the best way to make more money is to increase their market share. They could easily have accomplished this by lowering their price to all classes of customers by an equal amount. This would have enabled jobbers, dealers and direct accounts to reflect lower retail prices, resulting in an increase in the suppliers' market share.

Unfortunately, this is where the oil companies made a decision that has essentially crippled our members' ability to compete. Rather than equitably reducing the price to both the jobber and direct dealer classes of trade, the suppliers lowered the price to their own outlets and direct supplied dealers in greater proportion than to jobbers. This allows those favored customers -- dealers and direct outlets -- to be more competitive and sell additional gasoline. At the same time, the refiner has maintained a larger margin on the sales to jobbers and distributors.

This situation forces jobbers to either reduce their margins -- eliminating the jobber functional discount -- or maintain a reasonable margin, posting a much higher price at the retail level, which means that either way they will eventually go out of business. The increased marketshare through the dealers and direct outlets gives the refiners controlled gallons, while jobbers face a continued reduction of profit.

This sounds like a complicated horror story, but in reality it is exactly what is happening in the marketplace. And this is just on the issue of pricing -- it doesn't even address the other unfair changes refiners are making and which we will review in detail.

Refiners Post Record Profits at Expense of Jobbers

The most recent reports by refiners substantiate that many are making record profits in their marketing and refining operations, while jobbers are virtually going broke. Eleven major oil companies recently reported higher downstream (marketing and refining) profits for the third quarter of 1982, compared to 1981. The recent reports for nine months ending in 1982 for marketing and refining profits showed the following:

Amoco: Nine months profits increased from a $100 million loss last year to a $153 million profit this year.

Exxon: Nine months profits reach $256 million, more than seven times its 1981 earnings of $35 million.

Shell: Nine months profits rose to $272 million from $239 million last year.

Gulf: Nine months profits rose to $217 million from a $107 million loss the previous year.

Texaco, Chevron and Phillips report separate earnings for marketing and refining, and some of the small refiners suffered losses, similar to jobbers. Analysts state the higher earnings were due to stable crude prices, which allowed majors to widen margins between crude costs and product prices.

Petroleum marketers have been before Congress on previous occasions, complaining about refiners subsidizing their retail outlets and distribution with crude oil profits. We will not go into detail on this issue again today, but it is a subject that Congress may need to address if oil companies continue to use crude profits to dominate the retail market. The September 6 issue of PETROLEUM INTELLIGENCE WEEKLY noted the substantial increase in major oil company domestic crude oil profits.

The publication reported the following after tax profit for domestic crude oil on a per-barrel basis, for 1979, 1980 and 1981.

	1979	1980	1981
Exxon	$2.43	$3.89	$4.58
Shell	2.50	4.06	5.02
Texaco	1.83	2.98	4.06
Mobil	2.00	2.97	3.84
Gulf	1.68	2.79	3.44

It is difficult for the small independent businessmen we represent to understand how major oil companies can justify inflated crude oil profit margins for their companies, while at the same time implementing policies that are forcing marketers out of business.

I would like to give you some specific examples of the unfair marketing practices we are facing.

UNFAIR COMPETITION IN THE MARKETPLACE

In order to give you a better perspective of the types of problems our members face, TOMA would like to first establish that petroleum marketers in Texas are encountering unfair competition in the retail marketplace. In our October survey, we asked the membership:

"Are you facing unfair competition in the marketplace?"

The responses showed that 80% feel there is unfair competition, while 15% were undetermined and only 5% did not encounter unfair competition.

The next area that we wanted to establish was where the unfair competition is coming from. Some refiners have maintained that jobbers are their own worst enemy and it is actually our own members who are using predatory retail pricing practices. The results of the survey have documented our contention that major oil company direct-operated and dealer-outlet pricing policies are considered a major problem for independent branded and unbranded marketers.

TOMA's survey shows jobbers perceive major refiner direct operated service stations as their major unfair competitors. Convenience store chains, often accused of selling gasoline at cost to attract customers, were not considered as significant a problem as the majors'direct outlets. Our members who felt they were facing unfair competition ranked the top six categories as follows:

1. Major Refiner Direct Outlets
2. Convenience Store Chains
3. Large Independent Refiner Direct Outlets
4. Large Independent Jobber Direct Outlets
5. Major Refiner Dealer Outlets
6. Small Independent Direct Outlets

Branded refiners'direct retail outlets that were most frequently listed in the order that our membership ranked them as unfair competitors were: Exxon, Texaco, Gulf, Shell and Mobil. Many also listed Conoco's secondary brands, Fas Gas and Jet.

The vast majority of our membership -- small jobbers and large branded jobbers -- were not seen as unfair competitors.

Please understand that we will fully document why our members feel they are facing unfair competition at the retail level. This information is in no way intended to influence retail prices, but is designed to demonstrate how refiners have used artificially high wholesale prices to jobbers, combined with discriminatory price reductions to direct outlets, to eliminate the ability of branded jobbers and the dealers they serve to compete and survive in the marketplace.

Major Oil Company Pricing Policies Detrimental to Marketers

In order to demonstrate the dilemma our members face in attempting to compete at the retail level, while obtaining a reasonable return on their investment, TOMA would like to give you some specific instances of predatory pricing.

For example, in October, Texaco was reportedly retailing gasoline at $1.059 per gallon in Brownsville and McAllen when the Texaco jobber wholesale price, including taxes, was $1.049.

Exxon was allegedly posting a price of $1.069 in Houston in September with the jobber buying price set at $1.0625 per gallon.

Conoco's secondary brand, Jet, was reportedly selling to consumers in Houston this October for $1.039, when the Conoco jobber buying price was $1.0495, more than 1¢ above the company's retail price.

Mobil's secondary brand, Sello, was reportedly selling at retail for $1.029 in Fort Worth, when the buying price for a Mobil jobber as $1.024 per gallon. Mobil, at its branded outlets in Dallas, has posted retail prices at $1.069 when the jobber buying price was $1.0305.

These are instances that deal directly with retail pricing policy. There are even more cases of refiners selling diesel to commercial accounts at prices equal to or below jobber costs.

Refiners Use Predatory Pricing to Take Over Commercial Accounts

Our survey indicated that 59 % of our members have experienced refiners taking over commercial accounts on a direct basis and eliminating the jobber. You might say this is the result of the free enterprise system, but when your supplier sells to a commercial account for less then your buying price, you begin to question what the free enterprise system is really all about. Some examples of the predatory pricing are as follows:

Gulf was reportedly selling diesel fuel to a commercial account in Texas for .94¢ per gallon, when the jobber buying price was .95¢ per gallon.

Phillips, last August, was selling to a diesel account for 89.5¢ per gallon, the same price a jobber paid. Mobil supplied an account in Dallas with diesel fuel for 91.5¢ in October when the jobber buying price was 94¢. There are reports of Exxon selling diesel accounts for 91.35¢ per gallon, when the jobber price was 94.2¢.

Although we have actual names of commercial accounts and dates available, we have not attempted to review all of this with you. However, I do have with me today a copy of an invoice to Sears, Roebuck & Company in Dallas, Texas, dated

October 19, 1982, where they purchased diesel fuel at 93.5¢ per gallon delivered, from Texaco. On that same day, the jobber buying price at the rack was $1.005.

These examples all relate to major refiner actons. TOMA has also been besieged with complaints about unfair marketing practices by small refiners who have been granted favoritism by Environmental Protection Agency lead regulations. The former rules that allowed small refiners and blenders a a price advantage were used to "undersell" branded marketers who have traditionally served the agricultural and commercial needs of Texas.

Mr. Chairman and committee members, how long can any business survive when it has for a competitor a supplier who will sell below your cost! Although these commercial accounts may be benefiting in the short term from the lower price, once the refiners have eliminated jobbers -- their competition -- everyone will be paying higher prices!

Metropolitan Pricing Policies Influence Entire State

Competition has always been a integral part of our industry and will continue to be. However, predatory pricing as we have outlined above, has taken its toll on hundreds of marketers and service station dealers around the state. One of the main contentions of major oil companies is that the pricing policies they utilize at retail stations in metropolitan areas do not affect the prices in other parts of the state. Again, let me stress we are not suggesting any changes in retail pricing, but our contention is that suppliers have eliminated or reduced the jobber functional discount (margin) through artificially high wholesale costs to jobber, while lowering their retail price postings.

TOMA asked its members if prices posted in metropolitan areas in any way affected the retail price postings in rural areas. The response showed that 85% feel that metropolitan prices do affect their market area, with the distance being as great as 280 miles.

Our survey results specifically noted that large city prices affected rural areas as follows: As far as 40 miles from Abilene, 280 miles from Dallas, 90 miles from Odessa, 150 miles from Houston, 100 miles from Amarillo, 125 miles from Austin, 60 miles from Wichita Falls, 35 miles from Tyler, 32 miles from Waco, 90 miles from Corpus Christi, 20 miles from Lubbock, 125 miles from Fort Worth, 120 miles from San Antonio, 25 miles from Texarkana and 20 miles from Beaumont.

Marketers noted that with Texas being a large rural state, many people commute from rural areas to metropolitan areas for work, shopping and entertainment. Thus, the major oil companies retail pricing policies in metropolitan areas actually have a direct impact on all parts of the state. Neither our members nor consumers can understand how a major oil company can sell gasoline for $1.059 in Houston and then expect a jobber of the same brand to be able to sell for $1.109 in Huntsville, 70 miles away, in order to obtain a margin that will allow him to continue in business. If the oil company can reduce its price at the retail level, it should be able to offer its jobbers a reduction in their wholesale price. Unfortunately, this is not happening!

Refiner Actions Reduce Jobber Margins To Unrealistically Low Levels

It is rather difficult for us to understand how refiners can justify retail or commercial prices near, at, or below their distributor prices. In our opinion, this is either blatant subsidization or it is a concerted effort to drive petroleum marketers out of business. It might help this committee to understand our point if we use figures from an internal Texaco document that shows their cost of doing business with various classes of trade.

Earlier we noted reports of Texaco selling at an outlet in south Texas for $1.059 per gallon. According to an internal Texaco document known as the 5-year long range plan, 1977-1981, Texaco determined that an investment station, where they own and operate the facility, cost them 7.63¢ per gallon in expenses. The company's long range plan projected it would reduce these expenses to 4.63¢ per gallon by 1981. This would mean that if Texaco were operating that station on a break even basis you would subtract the 4.63¢ from the posted price of $1.059 and the jobber buying price would have been $1.0027 per gallon. Yet, the jobber buying price was $1.049 per gallon.

Even if this was not a direct operated outlet and instead was a direct dealer, Texaco estimated its 1981 expenses for this type customer to be 3.66¢ per gallon. If you subtract the 3.66¢ per gallon from the retail posting of $1.059, it would reflect a dealer cost of $1.0224, again below the jobber cost. Texaco's own document, the 5-year Long Range Plan, clearly shows that the company is subsidizing its retail prices.

We also, earlier, quoted commercial sales prices that discriminate against jobbers. Yet, Texaco's own document indicated that their expense in selling to a commercial account in 1975 was 3.18¢ per gallon, and by 1981 was projected to be 2.68¢ per gallon. At the same time, this document showed that the most economical method of distributing product is through jobbers -- in 1975 the cost was only 1.23¢ per gallon, and by 1981, they projected it to be less than 1¢ or .73¢ per gallon.

Texaco's own documents show that sales through jobbers have the least expense of any type of customers -- we believe you would find this true for any major oil company. Why is it less expensive to market through a jobber? Because the refiner does not have the overhead in performing the functions that a typical jobber provides.

The refiners'efforts to eliminate the jobber functional discount can only be interpreted in two ways... either they want to increase their own profits at the expense of jobbers by keeping unrealistically high rack prices, or they want to drive jobbers out of the marketplace, allowing them to eventually charge consumers whatever price they want. Either way, it is the consuming public who will lose.

Refiners Deny Relationship Between Dealer, Jobber Price

The method most widely used by refiners to reduce the jobber margin is by discriminating in price changes between jobbers and direct supplied dealers. For example, if the traditional jobber functional discount was 4¢ per gallon, a jobber could be charged 96¢ per gallon for gasoline while a direct dealer would pay $1.00 per gallon. The 4¢ was designed to cover the wholesale expenses of the jobber. If he had dealers, he would normally sell to them for $1 per gallon, which put them on an even footing with refiner dealers. If a dealer needed a 10¢ margin, then you would expect most outlets to price accordingly at $1.10 per gallon. But, then oil companies made the decision to increase their share of the marketplace, predominately in metropolitan areas.

To give you an example of how they can do this, a company could lower the price to consumers at direct operated stations from $1.10 to $1.07. In order for the refiners direct supplied dealers to stay competitive, the company lowered the price to those dealers by 3¢ per gallon, to 97¢. They could then post a price of $1.07 and effectively compete with the refiners direct outlets.

But what about jobbers and their dealers? Apparently some refiners decided that jobbers are not entitled to compensation for the functions they perform. Many oil companies did not reduce the price to jobbers. That means, using the example above, the margin has been cut from 4¢ to 1¢ per gallon because he is paying 96¢ per gallon and service station dealers supplied directly by the refiner are paying 97¢ per gallon. There is no way he can stay in business under these circumstances. He may keep the 4¢ margin and force his dealer to cut out 30% of his margin and post a price at $1.07 per gallon, but that will eventually force the dealer out of business. Even if that does happen, and the jobber becomes a direct operator, he still has to cover his wholesale and retail expenses.

It is hard for us to believe that any refiner is naive that they do not realize the repercussions of their retail pricing policies on jobbers. Oil marketers are at the mercy of their refiner, not only when it comes to supply, but also in the determination of their jobber functional discount through the rack price the refiner establishes. Our testimony today has established that our suppliers are one of the major factors in the reduction of jobber margins to the critically low levels. We have noticed that some major oil companies have gone to extremes to deny this.

Exxon, in a recently issued position paper, stated that: "Distributor buying prices are primarily influenced by rack prices. If the price to a major brand distributor is too high relative to the rack price, he cannot compete." Exxon has also stated that: "Dealer prices relate primarily to the prices in the dealer sector of the market." In our testimony, we have clearly documented the direct influence that retail market prices have on jobber margins, and hopefully, companies like Exxon will become more responsive to the influence of the marketplace on jobbers.

It might be of interest to this committee to know that some refiners refuse to acknowledge that jobbers are entitled to be compensated for the service they provide. The marketing vice president of Shell Oil recently told me: "A jobber is not entitled to a functional discount.

He will only earn what the competitive market will allow." Yet, the competitive market can and has been dominated by major oil company predatory pricing which has substantially lowered the jobbers margin. This hard line attitude by refiners is difficult for our members to comprehend. After all, it is the refiner who sets the jobbers rack price and then also establishes retail prices. Shell, and other refiners, by setting artificially high rack prices and then maintaining low retail prices, are directly responsible for the reduction in jobber margins that have forced many of them out of business.

Mr. Chairman and committee members, it is with sadness that we find, after decades of a close working relationship with our refiners, it is becoming obvious that many refiners are deserting their distributors and jobbers, with their primary motive being INCREASED PROFITS! This is evident when refiners attempt to justify their unfair marketing practices by blaming the changes on years of controls and the free enterprise system.

Exxon recently made the following statement: "A decade of controls that more or less guaranteed jobbers a certain differential may have led many to make significant investments in some markets that may not be so profitable today, given the competitive nature of a free marketplace."

Many petroleum marketers have been in business for more than 50 years and they have always received a differential in price for the functions they perform. Exxon was well aware of that when it knowingly converted more than 100 consignees to independent businessmen, allowing them to invest hundreds of thousands of dollars with the expectation of having a functional discount to pay off those loans Apparently, Exxon and other companies have no conscience in the fact that they allowed small businessmen to make these investments and now, through predatory pricing, are virtually assuring that many of them will not survive.

A recent telegram from a Mobil distributor to the oil company summarizes the problem we are confronted with: "Today's Dallas dealer tank wagon price for Mobil regular is 96.5¢ and the distributor price plus freight is 95.05¢ the difference is 1.45¢, that difference in November 1970 was 4.05¢, in March 1973 was 2.55¢, in September 1982 was 2.05¢, and on October 7, 1982 is 1.45¢.

Major brand salary operated retail price is 1.069 and the distributor cost with tax and freight is 1.0405. The difference is 2.85¢. Our direct labor cost is 2.5¢, leaving a gross profit of .35¢ which must pay $350 per month utilities, $600 per year insurance, $2,500 per year taxes, administrative overhead expenses, and a return on an investment of $400,000 per station. We must have a competitive price and we must have it immediately.

Direct Dealers Receive Preferential Treatment

The Texas Oil Marketers Association has clearly established the problem of reduced margins for jobbers. Another unfair marketing practice that we only briefly touched on is the preferential treatment that refiners have recently been giving their direct-supplied dealers.

The first thing we need to establish is why an oil company gives special consideration to a certain class of customer. In our opinion, it is a trend by the refiners to gain direct control of the gasoline they refine and sell. Many of their direct dealers operate service stations that are owned by the refiner and by giving special consideration to those locations, the oil company can increase its market share and increase the value of its investment.

In order to establish whether subsidies for direct-supply dealers is a problem in Texas, we asked our members whether or not they felt that direct-supply dealers received programs that were not available to jobbers. Seventy-four percent said that refiners' direct dealers are given preferential treatment!

I would like to list for you some of the areas where refiners have established special programs or policies for direct dealers.

Pricing Policies: Through discriminatory price adjustment, refiners have narrowed the differential between jobber and dealer buying prices. Since decontrol, we have reports that Gulf's differential has gone from 4¢ to 2.5¢ ... Exxon's from 3.5¢ to as low as 3/4¢ ... Mobil's from 4¢ to 1.45¢ and Shell's from 4¢ to 1.2¢.

Earlier, we documented the numerous expenses, investments, services and functions that jobbers perform to earn the functional discount. When a jobber with a $1 million investment sees a dealer with nothing but a set of tools buying only one tenth as much product and paying only a cent or two more, he has to think twice about being a jobber -- in some cases, he might be better off to become a dealer. (Unfortunately, many refiners would not agree to this change.)

Another program that we have periodically experienced in our industry deals with "rebate plans." The automobile industry initially used this as an incentive for the public to buy cars. In the oil industry, refiners have adopted the concept for gasoline sales. They give a price rebate for selling gasoline -- but they discriminate in whom they give it to.

For instance, during the month of November, a Texaco dealer can earn a 4¢ rebate on all sales over 50% of last November's purchases. If he reaches 100%, he gets an additional 1.5¢ rebate retroactive for every gallon sold that month.

Shell dealers in certain states not only get a 6¢ a gallon rebate for all sales over 70% of last November's sales, but they also get a 2.5¢ a gallon "rental rebate" for all sales over 100% of the base period.

What do Texaco and Shell jobbers get? Not one penny!

This is not the first time refiners have utilized rebates to increase their direct dealers' gallonage -- they have used this discriminatory program before. Texaco has openly admitted that these moves are an effort to shift product from jobbers to company operations and direct-supplied accounts. Even though their internal documents prove that sales to jobbers are the most economical to the company, they want to gain direct control of the product they sell -- even if it is at the expense of their distributors and the customers they serve.

Allocation Policy: Supply is not a problem today, but it has been in the past and very likely will be in the future. Last May and June, we had an opportunity to see how the free market would work, experiencing the first shortfall since controls were lifted in 1981. Here again, we were confronted with discriminatory allocation policies which favored refiners' direct outlets. Reports indicated that Texaco, Shell Chevron, Exxon, Mobil and other majors were limiting supply to jobbers, while allowing dealers to buy in excess of 100% of their base period purchases. As an example, in June Texaco only allowed jobbers to buy 100% of their June, 1981 purchases, while allowing its direct-supply dealers to pool unlimited amounts of product and even gave their dealers a rebate.

The discrimination does not stop there! Chevron initiated an "Operating Hours Incentive Program" in August whereby the company provided cash incentives to dealers who agreed to extend their operating hours. When we wrote Chevron asking if they would provide a similar program for jobbers, the company replied that they did not feel that it was necessary to establish a program for them.

Other services that certain direct dealers receive include the painting of stations, free signs, free equipment and maintenance, maps to provide to the public, and free credit card imprinters. Most of these services used to be provided to jobbers on a complimentary basis, but refiners have either abandoned the program or now charge the jobbers. This preferential treatment for dealers is clearly discriminatory. This might be easier to accept if the refiners were to argue that jobbers receive a "functional discount" to pay for these services themselves. However, as we have continually pointed out in this testimony, it is the refiners who are reducing the functional discount to a level that will not even allow marketers to cover their expenses, much less pick up the costs associated with the programs we have just outlined.

ELIMINATION OF HAULING ALLOWANCE INCREASES FINANCIAL PRESSURES

TOMA has clearly documented the actions refiners have taken to reduce the jobber functional discount. Our problems do not stop there. Not only have the oil companies cut our margins through artificially high rack prices and subsidized retail prices, but they have shifted a major expense to jobbers.

Traditionally, refiners paid jobbers a hauling or freight allowance when he used his own truck to deliver product. This was in the form of a credit on an invoice and would typically average 1¢ per gallon. This enabled a jobber to recoup expenses for the operation of an expensive transport truck. If the jobber did not have a truck, most refiners would deliver the product to him or pay a common carrier to deliver it. In that situation, the jobber would not receive the freight allowance.

Under Department of Energy regulations, refiners were required to maintain these freight allowances when jobbers hauled their own product. But it did not take long after controls ended for the oil companies to see an excellent opportunity to increase their profits by discontinuing the hauling allowance policy. Within one week of decontrol, Diamond Shamrock dropped freight allowances and initiated a new system of pricing known as "terminal pricing." Each refiner's terminal would have a price established depending on the refiner's cost of shipping the product through a pipeline to the terminal. Those facilities near a refinery would pay less, while those farther away would pay more. Unfortunately for jobbers, they not only lost the traditional freight allowance that helped to cover the overhead on an $80,000 transport truck, but many faced higher prices because the terminal where they picked up their product was far from the refinery.

According to our October survey, 81% of our members faced increased costs as a result of changes in pricing. This change was not just isolated to a single refiner -- we saw an immediate "ripple effect." Following the action by Shamrock on February 1, 1981, American Petrofina discontinued freight allowances on March 1; Exxon initiated a new pricing plan on May 1; Texaco and Arco began terminal pricing policies in certain parts of the country on July 1; Shell began a terminal pricing program in September, and Conoco went to terminal pricing on October 1, 1981.

This is now an industry-wide practice -- a change which puts increased profits in refiners' pockets while digging a deeper financial grave for their jobbers. Our survey showed that 80% of our members felt the new pricing policy from their refiner was detrimental to their business, while only 5% felt it was good and 15% felt no impact.

CREDIT CARD SURCHARGES -- THE NAIL IN THE COFFIN?

Consumption is down, jobbers' margins have been reduced by predatory pricing by refiners, expenses are up because the oil companies terminated various programs available to jobbers and dropped freight allowances ... what else could possibly come along?

Credit card surcharges! An added expense to jobbers, dealers, and consumers, resulting in increased profits for the refiners. This move has probably been the most costly for the small businessmen we represent. It all started in November, 1981, when Texaco began assessing a 3% surcharge to all dealers or jobbers who accepted the Texaco credit card. This came as a shock to the industry, because branded marketers have always understood that one of the reasons they pay more for branded gasoline is because they have the credit card program. This is another change that soon spread through much of the industry. Today, Texaco, Amoco, Exxon, Phillips, Mobil, Conoco, Cities Service, Gulf, Chevron, and Kerr-McGee have a surcharge when a marketer accepts their credit card.

This has become a large expense item for jobbers and dealers, as well as the consuming public. Let me give an example of what this means to a jobber or dealer who accepts the credit card. The November 5 Lundberg Survey reflects the average self-service regular leaded price gasoline in Houston as $1.069/10 per gallon. According to Lundberg, this includes a 3.86¢ per gallon margin. If a jobber or dealer accepts a credit card from one of the refiners I just named, he will pay from 1% to 4% to the refiner, with the most prevalent surcharge being 3%.

If you take 3% of the $1.069/10, that is a cost of 3.2¢ per gallon, or 83% of the margin on each gallon of gasoline. In Texas, a marketer cannot stop accepting credit cards because it is an integral part of his business. He has spent years building a name, image, and clientele that needs or desires to use a company credit card. Approximately 40 to 50% of our members' retail sales are on supplier credit cards, with the average marketer in Texas having 14,245 credit card charges per month. The top nine petroleum shareholders in Texas alone have over 70 million credit cards in the United States and have credit card sales of close to 12 billion dollars annually.

Marketers are trapped. They can't afford not to accept the cards, but the expense of honoring them costs the average marketer over $45,000 per year. The initial reaction of oil companies was to tell marketers and dealers to pass the cost on to the public. Unfortunately, either competition or conscience won't allow the surcharge to be passed on. Only 17% of our members have passed the surcharge on to the public. A total of 40% have absorbed the cost, while 43% have passed the cost on to their dealer, placing him in the same dilemma.

Some refiners openly admit that the surcharges are an economic measure to recover expenses or increase profits. The president of Cities Service Company wrote TOMA on September 28, 1982, and stated: "We are surprised by the jobbers' handling of credit card charges: many are absorbing the cost instead of passing it on to the consumer. Jobbers should be more innovative and aggressive in credit charges passed through to consumers."

Maybe we should be criticized for not charging the consumer, but it is still something we have difficulty accepting. For years we have always understood that the cost of credit was included in the price. It is also difficult for us to understand how the refiners can justify a surcharge for their credit cards when most of them are experiencing record profits in their marketing and refining departments. While Cities Service says "sock it to the consumer," other refiners have come up with unique "camouflage" for their surcharge programs. Exxon has been one of the leaders in a misleading program called "discount for cash." Rather than admitting they are assessing a surcharge to recover expenses and increase their profits, they are trying to convince the public that they are offering them a discount for cash. The company, while recently addressing pricing policies, stated, "In addition, the difference has changed, as Exxon has altered its approach to charging for the services included in the price, such as credit cards." The 3% they assess when jobbers and dealers accept their card is clearly an attempt to shift the cost of credit from the oil company to the marketer.

In our October survey, 69% of our membership felt that "discount for cash" programs have not benefited the consumer. These small businessmen are fully aware that this is a ploy by the oil companies to increase their income. The discount for cash concept has been spreading across the state and currently affects 76% of our members. Not only is it misleading to the public, but it has resulted in price wars that have contributed to the predatory pricing practices of refiners. In our survey, 89% of our members reported that sales have actually declined as a result of the discount for cash and surcharge programs.

Some of the companies contend that cash customers have been subsidizing credit card customers and, thus, the surcharge requires cardholders to pay their way. Yet, our members who deal directly with the public and hear their reaction first-hand, say that 52% of the consumers have an unfavorable reaction to the discount for cash/credit card surcharge program, while only 15% had a favorable reaction. The major complaints, in order of rank, were:

1. Complaints from credit card customers objecting to the higher price;
2. Customers feel deceived by the program;
3. The street price is lower than the pump price;
4. Confusion over the discount program.

Oil companies have contended that lower-income and elderly people have benefited from the discount program. In reality, they have suffered an injustice. It is often the elderly and low-income who use an oil company credit card to pay for gasoline while waiting to receive their social security checks or pay checks. The elderly citizens who do wish to pay cash now find the dilemma of pulling into a service station and finding they are required to pay a higher credit card price because the full-service island is for credit only and the self-service island is cash only. Many are too old to pump their own gasoline and thus are forced to pay the higher price. Many marketers have also discovered that the discount for cash programs will not work and have been forced to adjust all prices upward to compensate for the surcharges.

Refiners are not offering any benefit to consumers; they have developed a program that is designed specifically to increase their incomes. There is very little difference in the wholesale prices between those companies who offer credit cards without a charge and those who don't. For instance, the November 1, 1982 Oil Express, in its listing for "Supplier Prices at Key Cities," shows that Shell Oil, which accepts credit cards without a surcharge, has a lower wholesale price than Amoco, Citgo, Conoco, and Gulf. If refiners were truly offering a discount for cash program, they would have substantially reduced their wholesale prices so that jobbers and dealers could pass the savings on to consumers.

This is just another example of the high-handed methods refiners are using to increase their profits . . . at the expense of their jobbers and the consumers they serve.

ATTEMPTS TO RESOLVE DIFFERENCES BY DEALING DIRECTLY WITH THE REFINERS

Now that we have outlined the type of marketing practices we are facing, I would like to explain what we have attempted to do to resolve them. One of the first efforts was an attempt to resolve our differences by dealing directly with the refiners. In my acceptance speech after being elected President at the TOMA convention in April, I noted that my main objective during my one-year term is to rebuild the relationship that once existed between jobbers and their suppliers. In carrying out this goal, TOMA has communicated its concern directly to refiner representatives, urging them to work with us in developing a true free market.

We have met personally with marketing vice-presidents or representatives of Exxon, Gulf, Shell, Conoco, Shamrock, Kerr-McGee and LaGloria.

We have written more than 120 letters to the refiners covering many of the issues I have reviewed today. In our opinion, not a single response resolved any of the problems we have communicated to them. Although some refiners have been extremely willing to openly discuss concern, others have refused to cooperate. One recent example was where we initiated meetings to discuss a problem our members might be creating for refiners. It has to do with jobbers not buying all their product from their branded supplier and instead "shopping" for the cheapest price. Although some would contend that this is good business, it can create problems for refiners who must determine how much product to refine in a given month. We were offering to attempt to correct this situation. However, some of the refiners were not willing to work with us! For instance, we received the following telegram in response to a request to meet with Texaco: "I thank you for your invitation; however, Texaco's policy precludes the discussion of matter except with individual customers. I must therefore decline your invitation."

One reason some refiners have been reluctant to meet with a trade association on industry issues is because they maintain they resolve their problems by dealing directly with their marketers. Most refiners have what are known as "wholesaler councils," jobbers handpicked by suppliers to meet with company management and share the concerns they have with company programs.

At the U. S. Senate Small Business Committee Hearing on refiner marketing practices held by Senator Alan Dixon in Chicago on October 12, an Amoco representative testified about the Amoco Jobber Council and how it is "a real channel of two-way communication in the company."

Because of this comment, one of the questions asked our members on the marketing practices survey conducted in October, was how effective these groups were in resolving differences between the company and customers. The results confirmed our belief that there is no "two-way communication" with refiners. The survey showed 62% feel these councils are ineffective. When asked why, the almost unanimous consensus was that the meetings are one-sided -- the company representatives usually tell the marketers their thoughts and are not interested in, or would not act upon, jobber recommendations.

This quote from a letter written by a major brand marketer in Texas to his refiner will give you an idea of the effectiveness of marketers dealing with company officials.

> "In my opinion, the distribution meetings are a very poor "third line" of communications. I say

> that because these conferences are one-way communication from the company to distributors and any attempt to communicate the other direction has proven futile. Before you refute my last statement, you just think back on the last two conferences and remind yourself of one single piece of data or information that came to you as a direct result of communication from distributor to the company at one of those conferences ... I view the conferences as an opportunity for the company to communicate to its distributor certain decisions, policies, marketing practices and strategies that have been firmly established with an insensitive regard to the distributor and his well-being. The only attempt to soothe him is to coat his medicine with prime rib and wash it down with spirits."

I mentioned earlier our attempts to communicate with the major oil companies and work out our differences together. I will not burden you with the number of companies who did not even respond, or who wrote back a courteous reply that in no way addressed the issue. I will simply repeat that not a single issue has been resolved in our dealing directly with the refiners.

A good example of the major oil companies' attitude toward our efforts to document and discuss what we feel are unfair marketing practices was addressed by Robert H. Chitwood, President of Cities Service Company, when we sent him the results of a membership survey conducted in July. The survey showed the major concerns jobbers have with refiner policies. This was his reply:

> "Your survey clearly shows that alleged discrimination and predatory actions are singled out by jobbers as being serious. Existing laws have handled that

> allegation. If conditions exist as alleged, we urge that jobbers exercise their legal rights."

Mr. Chairman and committee members, a portion of our members operate with only a husband driving a bobtail, a wife keeping the books, and an employee to help run the bulk plant. His margin has been cut in half in the past ten years and his gallonage is probably down. How is he going to sue a major oil company?

Just to find out how evenly matched this would be, TOMA called Cities Service to find out how many employees they have on their legal staff. The answer: 65!

No wonder they write and indicate "Sue if you don't like it!"

It might even put our situation in a better perspective by quoting the reaction of one refiner, known as a "jobber company." Phillips Petroleum sells virtually 100% of its product through its jobbers. Yet, when Phillips marketers in North Carolina recently met with company officials for what is called a brand meeting, Phillips marketing representatives were quoted as saying: "If our actions are not acceptable to each of you, then we will have to find new customers and you will have to find new suppliers."

Mr. Chairman, maybe this is how the free enterprise system works, but I can assure you that the small independent businessmen we represent could not or would not want to find a new supplier in today's marketplace. And those who could, might be reluctant to do so after 25 to 50 years with the same brand of supplier.

As you can see, our dealings with refiners have been rather frustrating. As marketers, we understand that times and conditions will change, but as an association, TOMA cannot sit back and allow the oil companies to mandate the demise of thousands of small businessmen with the sole intent of their actions being to increase their profitability.

Existing Legal and Legislative Remedies to Correct Problems

When it became evident that early communication efforts initiated with the oil companies were not resolving any of the problems, we began communicating with federal agencies and congressional committees that have jurisdiction over anti-trust violations and their impact on small business. Last spring, TOMA supported efforts to obtain a congressional hearing on problems marketers were having in obtaining fair allocations during the spring shortfall of supply. Congressman Philip Sharp conducted a hearing in June which reviewed this issue, yet not a single major oil company official appeared at the hearing. Although the allocation problems were resolved when the supply shortage turned to a surplus, the unfair allocation formulas utilized substantiated our concern that some major oil companies will not allocate on an equitable basis during any shortage.

In this situation, our concerns with allocation were not just a few isolated circumstances. The survey we conducted last July noted that only 41% of our membership felt the refiners were fairly allocating or distributing their products, while 43% felt the allocation formulas favored outlets that the refiner owned and leased to a dealer, commonly referred to as direct dealer outlets. Sixteen per cent felt the oil companies favored direct outlets, the outlets they own and operate with employees.

On June 22, 2982, our Association wrote to Mr. Ronald L. Winkler, Deputy Assistant Secretary for Energy Emergencies, expressing concern over the unfair allocation policies of the refiners and asking that DOE monitor the supply situation and work with the suppliers to assure equitable allocation.

Mr. Winkler responded on June 30: "While we have heard scattered reports of problems such as those raised in your letter, these indications appear inconclusive. In general, we would encourage energy suppliers, distributors, and consumers to work together to resolve potential equity issues without governmental interference. Only after such cooperative efforts have demonstrably failed and after resort has been made to other commercial and legal remedies should federal involvement be considered."

The increase in supply solved this problem, but the other predatory practices continue.

In August we turned to the Justice Department, requesting that they investigate the marketing practices of the oil companies and possible anti-trust violations. TOMA wrote to Mr. F. Baxter, Assistant Attorney-General, Anti-Trust Division, Department of Justice, requesting an opportunity to visit with him or his staff about our concerns. On November 4, as we had not received a reply, we again wrote, asking what legal recourse marketers would have and whether the Justice Department would review our concerns. We hope to receive some guidance about how to pursue federal enforcement of laws to prevent the unfair practices we have reviewed. As of November 21, we had not received a reply from Mr. Baxter.

Earlier in our testimony we've described the attitude of some of the oil companies with one specific example of a president's saying if you don't like what is going on, "exercise your legal rights."

We've pointed out that federal intervention has not been forthcoming, which means a marketer would have to individually sue his refiner. In order to determine the estimated costs in a lawsuit against a refiner, we wrote Bassman & Mitchell, a Washington, D.C. law firm, to find out what legal recourse marketers would have against major oil companies, and the costs and time frame such a suit would involve. Robert S. Bassman, one of the nation's leading energy attorneys, replied:

> "The major judicial avenues available to seek redress from 'discrimination and predatory action' are the federal antitrust laws. The most relevant of these are the Sherman Act (15 U.S.C. §§1 and 2) which prohibits price fixing, market allocation, or refusal of the deal as well as other attempts to monopolize; the Clayton Act, which prohibits exclusive dealing arrangements and tie-in sales; and the Robinson-Patman Act (actually an amendment to the Clayton Act), which prohibits price discrimination.
>
> While these statutes appear to offer marketers a great deal of protection against predatory and discriminatory practices, experience indicates that this protection is far more apparent than real. The difficulties of suing a major oil company are very great. The costs are extremely high, burdens of proof are enormous, and the elapsed time between the institution of a suit and final receipt of payment, even if the difficulties are eventually overcome, can be many years.
>
> To illustrate this, let me relate just one relevant example. In late 1972 Lee-Moore Oil was terminated by its supplier, Union. Lee-Moore sought and located counsel and finally brought suit in 1973. Union, reacting like most major oil companies to such a suit, put up a very long and tough (costly) battle and, in September 1977, was granted its motion for summary judgment. Lee-Moore immediately appealed and was victorious in 1979. A trial was finally held in the spring of

> 1982 which resulted in the awarding of a verdict to Lee-Moore of a little more than $150,000. Just today, Lee-Moore's counsel was notified that the court had refused to grant Union's motion to set aside the verdict and grant a new trial. Thus, today, some nine years after the suit was instituted, the matter seems near resolution. One more appeal, however, is being taken to the Fourth Circuit Court of Appeals by Union. It is, therefore, probable, given the Court of Appeals backlog that Lee-Moore, if it is once again victorious, will have spent over 10 years in this litigation.
>
> To give you an example of the massive amount of effort put in by Lee-Moore's counsel to date, its counsel has billed over 3,000 hours. This high cost to law firms makes the formerly standard 'contingent fee arrangement,' whereby the client offers to split his award but pays no hourly fee during the litigation, impossible. Thus, clients have to risk a substantial amount of money up front as well as risking counter-claims and of course great amounts of time and worry in such matters.
>
> What is needed is a way to cut down on this opportunity by large entities such as major oil companies to run up the amount of time and effort a prospective plaintiff would have to contemplate before any serious thought of the initiation of a lawsuit could be made."

Our members cannot survive, under present conditions, a legal battle of 10 years' duration. The above case also points out what an expensive proposition a lawsuit would be. If the law firm based the hourly fee on $75 per hour, which is below anti-trust attorney fees, the cost would be $225,000--

more than the judgment, and does not even include expenses!

Obviously, federal agency intervention or legal action is the answer to our problems.

CLOSING COMMENTS AND RECOMMENDATIONS

In closing, I want to reiterate that our appearance today is one of last resort. It is not an immediate attempt to turn to the government for help. What we have in our industry is a great deal of misunderstanding, miscommunication and uncertainty. Big Oil has its own objectives, which apparently include the elimination of petroleum marketers. They seem quite content in this role and justify it by using such words as "free enterprise."

Unfortunately, the refiner's definition of the free enterprise system only encompasses half of the true meaning: "Freedom of private business to organize and operate for profit in a competitive system without interference ..." They apparently do not believe in the rest of Webster's definition which says they can operate in a competitive system "... without interference beyond regulation necessary to protect public interests and keep the national economy in balance."

Mr. Chairman and Committee members, we truly believe that the survival of petroleum marketers is indeed in the public interest. We have reported to you the important role our members play -- not only for the 37,000 Texans whose livelihood relies on the survival of oil marketers -- but also the thousands of communities, the agricultural industry and commercial accounts who rely solely on independent businessmen for their petroleum needs.

You have seen what many oil companies have done to small businessmen with whom they have been affiliated for up to 50 years. What do you think these companies will do to consumers when they have eliminated their competition in the marketplace -- we believe they will substantially raise prices!

Many believe this is a new concept by the oil companies to completely take over all segments of the oil industry in key market areas. Maybe this is why our efforts to resolve the problems by dealing directly with the refiners have been met with either deaf ears or the arrogant attitude that they are out to increase their marketshare no matter who gets in their way. When we confront an oil company with a question about a new policy like the credit card surcharge -- a policy that substantially increases the profits of refiners while substantially increasing costs to consumers and placing additional financial burdens on marketers -- they seem surprised that we think this is discriminatory.

Evidently, the major oil companies use the definition of "discriminatory" as: "to use good judgment." You can find that definition in Webster's dictionary, but in our opinion, the other definition that Webster uses is more appropriate: "To make a difference in treatment or favor on a basis other than individual merit."

At least the arrogance of some suppliers is openly admitted when we talk about predatory practices. (Webster's definition of " predatory " is: "to dispose of or showing a disposition to injure or exploit others for one's own gain.") Texaco, Arco and Exxon have all stated their intentions to increase their marketshare, even if it is at the expense of their jobbers.

The vast majority of our members are shocked and dismayed at this attitude and actions of many of the other oil companies. The pressure has been mounting and building up over the past months for TOMA to do something about the situation. In our October survey, we asked members to rank the actions they felt were needed to stop the unfair marketing practices. The results showed that our members ranked various solutions in the following order:

1. Retail divorcement legislation (prohibition of an integrated company involved in exploration, production, transportation, and/or refining from directly operating marketing facilities)
2. Work directly with refiners to attempt to resolve marketing problems
3. Legislation to prohibit a credit card surcharge by refiners
4. Retail divestiture legislation (prohibition of an integrated company from both ownership and operation of retail service outlets)
5. Provide marketers with educational and business guidance to help them to cope with current problems
6. Financial disclosure legislation (a financial reporting law requiring companies to publicly disclose transfer prices at crude, refining, transportation and marketing levels)
7. Consistently oppose refiners' positions on federal and state legislative and regulatory issues (would include supporting efforts to eliminate tax breaks for refiners, to close IRS loophole advantages to major integrated oil companies, etc.)
8. Other suggestions

Despite this clear mandate for drastic legislation to break up the oil companies, TOMA feels an obligation to the industry to exhaust every effort to resolve our differences without legislative action.

At the same time, we need someone to take the responsibility for correcting the discriminatory and predatory practices and policies our members are encountering. We hope to avoid legislative action to resolve our differences. But I would remind our refiner friends at the hearing today that even the definition of free enterprise alludes to the need for intervention to protect the public interest. Maybe legislation would be the worst possible solution ... but when the business you have spent a lifetime building is going down the drain, government controls look mighty good.

Mr. Chairman and committee members, our efforts with refiners have failed. Governmental agencies do not have the time or the interest to intervene ... that means our very survival rests on your shoulders.

TOMA's recommendation is for this committee to use its prestige and authority to persuade the major oil companies to treat marketers with fairness and equity. You will have the facts to take to them from the information provided at this hearing. You must demand, on behalf of the thousands of small business petroleum marketers, their dealers, and the consumers they serve, that the refiners rescind their predatory policies and practices and restore fairness to the market place. You must demand a full explanation of the steps they will take to correct the inequities and closely monitor their actions between now and the next congressional session.

Gentlemen, if the major oil companies refuse to run their business in a manner conforming to the best interest of the consuming public, not just today in the form of lower prices, but in the future, taking into consideration the survival of the thousands of small businesses that serve our nation, this committee should be prepared to promptly pursue legislation specifically designed to correct subsidization and unfair business practices so prevalent today!

Mr. **Bedell**. Thank you very much, Mr. Bailey.

Mr. Hiler, do you have an opening statement that you would like to make?

Mr. **Hiler**. Well, not really an opening statement, Mr. Chairman, but I would like to welcome Robert Thornhill today, president of the National Oil Jobbers Council, from Fort Wayne, Ind. While Fort Wayne is not in my district, it is in Congressman Dan Coats' district, which is right next door. I know the Congressman would welcome your being here, and I certainly welcome you being here as well.

Thank you.

Mr. **Bedell**. Thank you, Mr. Hiler.

Mr. **Bedell**. With that, we will hear from you, Mr. Thornhill.

TESTIMONY OF ROBERT J. THORNHILL, PRESIDENT-ELECT, NATIONAL OIL JOBBERS COUNCIL

Mr. **Thornhill**. My name is Robert J. Thornhill. I am president of Thornhill Oil Co. in Fort Wayne, Ind. I am, however, appearing before you today as president-elect of the National Oil Jobbers Council. I think this committee is well aware that we account for approximately 50 percent of the gasoline sold in the United States, and we account for approximately 85 percent of the fuel oil sold.

My testimony has already been turned in, so I will just summarize it. You will note as a part of our testimony that we have input from virtually all of our member associations around the country on some of the problems that are occurring in the marketplace today in the area of petroleum marketing. In addition to that, you have already heard some specific problems from our member in the State of Texas, and following my testimony you will hear some more of the specific problems from the State of Illinois.

We sincerely appreciate this committee expressing an interest in the current marketing developments in our industry.

In today's climate we have probably the fiercest amount of competition that we have ever seen in our industry. This is coupled with the fact that today we are going through a recession, today we have extremely high interest rates, and in most parts of the country today the demand for petroleum products, because of conservation and price, is actually declining. This is especially true with the demand for motor fuel. This type of climate has caused all of our jobbers to become more efficient, more innovative, as we have historically done in the past, definitely resulting in lower prices to the consumer. However, there are some things taking place in the market today that greatly concern us. I would just like to summarize some of these issues for you overall on a national level.

In the first place, we feel that we have been discriminatory and subsidized and possibly predatory pricing on the part of many refiners. This occurs primarily today in roughly three areas. First, refiners today are selling product through their refinery direct salaried units at retail prices in many cases that are equal to or lower than the prices charged their jobbers and, in many cases, also prices charged their dealers.

Many refiners today attempt or keep attempting to increase the percent of the market through their direct retail units by lowering the retail price of gasoline but at the same time, out of the same terminal, not making the same reduction in the price of their product to jobbers, and again in some cases to dealers.

This continual pressure by these direct salaried units throughout much of the country is continually causing a shrinkage of the margin and a shrinkage of the profitability of jobbers to stay viable in this industry.

We also then have some refiners in various parts of the country that are given special incentives to dealers that make their delivered price equal to or again lower to the jobber price, some refiners actually stating publicly that they wish to promote more gasoline sales through their dealer outlets as compared to sales to jobbers or their other channels of distribution, even though in the years gone by they have encouraged these same jobbers to make huge investments in storage facilities, transportation facilities, and retail outlets.

The third type of subsidization we have today, which has already been mentioned by Mr. Bailey from Texas, is the fact that we again have returned to an era where some refiners are quoting prices of gasoline and diesel fuel in single transport lots to commercial accounts at prices from 3 to 5 cents below the price they charge their own jobbers.

It would be absolutely impossible for a supplier to defend any cost savings in selling a commercial account, one load of product, at 3 to 5 cents a gallon below selling multiple loads of that same product and transport loads to their jobbers. All of these above things that I have summarized on subsidization have taken place continually throughout various areas of the country. The only difference is that we have different players in different areas doing different things.

In addition, there are a few other things I would like to mention. No. 1, we have some refiners that are giving unfair allocations of product to jobbers as compared to their dealers. For example, some refiners are encouraging increased sales through their direct outlets, through incentives are increasing or attempting to increase sales through their direct dealer outlets, but at the same time they are limiting their jobbers to 100 percent of their contract volume, which makes it impossible for those jobbers to expand or increase their sales. Consequently, it automatically permits a refiner to increase his percentage of sales through a combination of direct retail outlets and/or direct dealers.

Also, as has already been stated by Mr. Bailey from Texas, there is continual pressure by many refiners to reduce the traditional jobber functional discount at a time when actual costs and the distribution of petroleum products is increasing.

We know that in a recent survey in Oil Express, they show that the margin to jobbers has shrunk 44 percent in the last 18 months. This is an analysis in the November 19 issue of the Lundberg letter, which is attached to my testimony, and I believe Mr. Lundberg testifed here yesterday.

Also, I would like to point out that another restriction placed on jobbers today in an increasing amount of time is that some refiners have eliminated the 1 percent discount to jobbers. Others, while not eliminating the 1 percent discount to jobbers, have limited the lines of credit as the price of petroleum products have gone up, which puts a great deal of stress on the cash flow of the jobbers.

Another area which has really caused a great deal of problems is the credit card surcharge. As you already know, many refiners have assessed various amounts of credit card surcharges against jobbers and dealers that they know cannot be passed through customers, either by law or the fact that the marketplace will not permit the passthrough of these additional surcharges.

These surcharges have been assessed by many of the major refiners, realizing that historically they have always stated that one of the reasons for the higher cost of paying more for branded product by branded jobbers and dealers is the fact that it includes a fee to cover credit costs. Now jobbers are still paying more for the product and also pay an additional or surcharge on credit cards they accept.

We in NOJC have made many efforts to resolve these problems with our suppliers. We have talked to many of the suppliers, and they have been very cordial. Up until now we have seen nothing in the marketplace to correct some of these inequities that we have discussed here.

As refiners testify today, they will undoubtedly tell you how jobbers play an important part in their operations, but this applies only in areas where they do not want to market directly or only in those areas where they do not want to increase sales by giving special incentive to the direct dealers. Some of the refiners will also probably state that there are things that are taking place that are normal as we move from control into decontrol, but they do not tell you the jobbers do not have other profit centers to subsidize their marketing operations as we go through this painful transition.

Some might also state that present laws are plentiful and give full protection to jobbers and dealers, but what jobber can afford to spend money over a 5-year period to challenge a refiner in court on either the Robinson-Patman Act or some of the other laws dealing with antitrust.

NOJC appointed a special ad hoc committee earlier this year to study problems in the marketplace and come up with suggestions on how to solve them. These recommendations were approved by our board of directors, and I would just like to point them out to you this morning.

One, that NOJC push for stepped-up efforts by the U.S. Department of Justice and the Federal Trade Commission to enforce alleged refiner violations of existing antitrust laws. Gentlemen on this committee, we think this is an important area where you can give assistance to the small, independent businessmen in this country, by continually putting more pressure on the Federal Trade Commission, and the Department of Justice to pursue a study of these alleged refiner violations.

Second, that Congress initiate investigative hearings into current petroleum marketing practices and problems and to Federal agency enforcement policies concerning alleged violations. We appreciate very much your holding this hearing and that we have an opportunity to testify before it.

Mr. BEDELL. How close are you to being finished, Mr. Thornhill?

Mr. THORNHILL. Half a minute.

Mr. **Bedell**. Perfect.

Mr. **Thornhill**. That NOJC and its member associations develop a full slate of State legislative and other remedies to address predatory supplier activities procured at each State, and that NOJC consider supporting a specifically designed piece of Federal divorcement, divestiture legislation tailored to address the overall problems of the gasoline marketplace.

Thank you. I would be glad to answer any questions.

[Mr. Thornhill's prepared statement with attachments follow:]

PREPARED STATEMENT OF ROBERT J. THORNHILL, PRESIDENT-ELECT, NATIONAL OIL JOBBERS COUNCIL

Good morning Mr. Chairman and members of the Subcommittee. My name is Robert Thornhill and I am President of Thornhill Oil Company in Fort Wayne, Indiana. Today I am appearing in my capacity as Senior Vice President of the National Oil Jobbers Council (NOJC), a federation of 42 state and regional associations representing thousands of small independent petroleum product marketers. We estimate that our members market approximately 50 percent of the motor fuels and 85 percent of the home heating oils consumed in this country. NOJC appreciates the opportunity to testify today and share with the Subcommittee some of our serious concerns with the present market situation.

I commend the Chairman and the other members of the Subcommittee for expressing interest in the current market developments. Over the past 22 months since decontrol, marketers have faced sudden terminal outages in some areas, have been placed on allocation fractions, and have had their suppliers change marketing terms, credit card policies, credit terms and hauling allowances. These many changes combined with low margins, declining demand, and a poor economy have had a devastating impact upon our membership, which includes marketers who are among the most efficient and capable business people in the petroleum industry.

What is a Petroleum Jobbership

A petroleum jobbership is an independent business which typically performs both the wholesale and retail functions in the motor gasoline distribution process. Jobbers who sell product under the trademark of their refiner-supplier are termed "branded" jobbers; those who sell under their own private brand name are termed "unbranded" marketers.

The wholesale function begins with the bulk acquisition of product, usually at a refinery terminal. From the terminal, jobbers transport the product in their own vehicles, then distribute the product to various wholesale accounts which resell the product to the ultimate consumer. Jobbers also store product at their own bulk plants, extend credit to their customers and perform several other wholesale functions. The vast majority of wholesale gasoline is sold through independent service station dealers and other types of independent retail outlets.

The retail function of jobbers includes the ownership of service stations or retail outlets and sales directly to the consuming public, the management of salary-operated outlets, and sales of product to bulk end-users such as farmers, ranchers, local governments and commercial enterprises.

Jobbers earn their margins by performing services for their customers which their suppliers would otherwise need to perform. Jobbers exist because they can perform these services more efficiently than can their suppliers. (For a detailed account of the many functions jobbers perform, please refer to the Jobber Function Paper, attached.)

Market Conditions

Since January 1981 when price and allocation controls were removed, the gasoline marketplace has been the scene of the fiercest competition in the memory of most independent marketers. This competitive environment, coupled with the economic recession and high interest rates, has encouraged marketers to streamline their operations to reach peak efficiency or else face financial ruin. This increased efficiency has resulted in lower prices and a higher level of service for all consumers.

Competition and improved efficiency have never seriously concerned independent marketers. They are the hallmark of our business. When one considers the many and varied functions and services that jobbers perform, it is simple to conclude that it is the thousands of independent marketers who provide true competition at the retail level. Virtually every major innovation which has improved the efficiency of gasoline marketing has been the brainchild of a marketer willing to take a chance. These include such things as self service, car wash and convenience store tie ins, and multi-bay pumpers, to name a few.

Yet, despite this longstanding efficiency, history of customer service, and competitive capability, today the viability of thousands of independent small business petroleum marketers is at stake. In fact, in many gasoline markets efficiency has been totally eliminated as a determinant of success or failure. The key determinant of survival today, Mr. Chairman, is not efficiency or ability to compete. Rather, it is a question of which company can subsidize its retail prices for the longest period of time with profits earned in other areas. It takes no genius to realize that the major integrated oil companies with their vast profits obtained through production, transportation, and refining will be the survivors in that battle as independent marketers fall by the wayside.

In addition to being victimized by subsidized pricing practices of the major oil companies, marketers have also seen their product costs rise as a result of a series of discriminatory, illogical, and counter-productive actions by suppliers. These actions have included market withdrawals from various regions around the country, complex and unworkable rebate schemes, the imposition of costly credit card processing fees, and discriminatory gasoline allocation policies.

To fully ascertain the widespread nature of these problems, NOJC surveyed each of its member associations. The responses we received (see attached) vary from state to state and region to region, but almost all of them substantiate the concerns I have expressed thus far. In addition, there are several common problems cited by virtually every state. These statements also show that the current situation is extremely serious and far-reaching.

My two colleagues from Texas and Illinois on the panel this morning can discuss more specifically the problems they face in their individual states, but I would like to summarize several of the most common complaints. They fall into the following general categories:

- Discriminatory and Subsidized Refiner-Supplier Pricing Policies. A recurring complaint involves a consistently documented practice in which the refiner-supplier raises the jobber's buying price, but does not raise its transfer price to company direct-operated retail outlets, or the price to its dealers, by a proportional amount. This results in a jobber wholesale buying price which is often set at levels at or above the refiner's retail street price to consumers. It is obviously impossible for marketers to stay in business under these inequitable market conditions.

On one occasion, a supplier recently acknowledged to NOJC that it was conceivable that its wholesale rack price to marketers could be higher than the retail price to motorists. This supplier rationalized this fact on the basis that its wholesale price was competitive with other wholesale prices and that the retail prices were competitive with other retail prices. The obvious conclusion one can draw from this is that the competitive pressures at retail do not exert themselves upward to the wholesale level.

- Discriminatory Allocation Policies. Beginning early in 1982, marketers began complaining about refiner-suppliers placing a product buying limit on independent jobbers, but not upon the suppliers' own company direct-operated stations or upon their direct-supplied dealer network. Suppliers would set allocation base periods which were periods of historically low purchases by independents. The low volumes purchased were because of the high purchase price of those refiners. Instead of allocating short supplies equitably among all purchasers, refiners gave dealers and their own direct operations higher allocations and in many cases placed no limits on their volumes.

- Reductions in the Jobber's Traditional Functional Margin. The differential between the wholesale jobber buying price and the retail dealer buying price has been reduced significantly and in some cases is virtually non-existent; jobbers cannot recoup their legitimate wholesale investments under such pricing. According to an Oil Express survey, (10/4/82, see attached) the jobber-dealer price differential has shrunk by 44% in just 18 months. An excellent analysis of the removal of the jobber functional discount is the November 19, 1982 edition of the Lundberg Letter, which I ask be submitted as part of the hearing record.

Jobbers have traditionally been given a functional discount because they performed certain market functions which their suppliers did not. Marketers hauled product, stored it, and serviced customer accounts, business functions that were not performed and costs which were not incurred by the suppliers. Since these functions represented an economic savings to the refiner, and because a jobber could perform the services more efficiently, a jobber discount was standard practice. While the value of this function, quantitatively speaking, has and continues to be a matter of great debate within the industry, it generally is agreed that the function has some positive value, and that jobbers continue to perform the services which merit a functional discount. (See Jobber Function Paper, attached) In some instances today, however, the differential is actually negative. That is, the delivered dealer tank wagon price, when various allowances are factored in, is higher than the price to the jobber at the terminal or rack.

- Changes in Jobber Credit Limits and More Stringent Credit Limits. Many refiners have eliminated the traditional 1%, ten days prompt payment discount, and have harassed jobber customers by limiting their lines of credit. Some of these marketers have been selling branded product for their refiners for more than 50 years. Such changes have severely complicated jobber cash flow problems and have compelled jobbers to finance more and more of their product purchases, driving up their interest costs and damaging cash flow. Marketers who have faithfully worked to sell their suppliers product for years, who have had stable business arrangements and who have been good customers are frankly distraught over the insensitive and inflexible credit policies that their suppliers have initiated.

- Elimination of Jobber Freight or Hauling Allowances. Supplier elimination of hauling allowances and refiner direction of jobber product purchases to terminal locations further away from a given jobber's marketing area are also commonly cited problems. By requiring marketers to haul from more distant terminals, refiners force up the freight costs for the product in effect eliminating whatever hauling allowance that might still exist.

- Increased Refiner-Supplier Undercutting of Current Jobber Bulk End-User Customer Accounts. Jobbers are increasingly concerned over their supplier's efforts to take away bulk customer accounts by pricing the product below the jobber's purchase price. These allegedly subsidized prices to the bulk users are predatory and are eroding marketers' competitive positions.

- Temporary Competitive Allowances for Refiner Direct-Supplied Dealers. Many suppliers have granted dealers competitive allowances with no proportional, equitable allowance for jobber customers. This amounts to subsidizing one class of customer over another and further illustrates the illogical and discriminatory practices engaged in by some suppliers.

- Credit Card Surcharges. Perhaps the most ludicrous situation in the marketplace involves the imposition of credit card processing fees. These fees are surcharges passed on to marketers, but which can not be passed on to consumers except in the price of product. Competitive pressures limit the ability of most marketers to recover these surcharges in the product price. Various companies are trying various marketing strategies to cope with this problem yet these strategies for the most part, have lead to greater consumer confusion and a greater influx of credit cards into the system as each company gives the customers of other companies a new credit card.

* * *

No one refiner-supplier has been accused of all of the inequitable, discriminatory, or predatory actions I have mentioned; however, virtually no refiner is totally exempt from at least one of the practices which are the subject of marketer complaints.

Refiner Response

NOJC has made repeated efforts to resolve these problems with suppliers. We have written and met personally with marketing vice presidents of most of the major integrated companies. While the refiner response has generally been cordial, none of our major concerns have been addressed. Time after time NOJC's member's concerns and problems have been shrugged off by the refiners. Refiners contend they are powerless to control their own actions in the market. Mr. Chairman, you and members of the Subcommittee will have the benefit, as we have in other meetings over the last few months, of hearing refiner explanations about declining demand, a poor economy, meeting competition, and the shake-out of the market after decontrol. Marketers are experiencing these same problems, but we lack other major profit centers to subsidize our gasoline operations.

Many suppliers will also cite their efforts to foster and build sales through efficient jobber operations. These efforts however, are confined to areas which the company does not wish to control directly. In those areas refiners wish to control directly, the marketer is subject to a form of economic divestiture which in effect prohibits him from competing in that particular market.

NOJC Response

When direct communications proved unresponsive, the NOJC formed a special Ad Hoc Committee on Supplier Practices to study and recommend policy changes at the national level which would enhance competition in the petroleum marketplace. The Ad Hoc Committee recommended a four-point policy program, a policy program which was adopted by the NOJC Board of Directors at its Fall Convention in October. The program is as follows:

- that the NOJC push for stepped-up efforts by the U.S. Department of Justice and the Federal Trade Commission to enforce alleged refiner violations of the existing antitrust laws;

- that the Congress initiate investigative hearings into current petroleum marketing problems and into federal agency enforcement policies concerning alleged violations;

- that NOJC and its member associations develop a full slate of state legislative and other remedies to address predatory supplier activities peculiar to each state; and,

- that NOJC consider supporting a specifically-designed piece of federal divorcement/divestiture legislation tailored to address the overall problems of the gasoline marketplace.

NOJC's Board of Directors made these recommendations after careful consideration and with some reluctance. As one can also see from the attached statements from various states, there is no unanimity as to the solution to these problems. Government interference in the marketplace is something the Council and its members have consistently sought to avoid, not encourage. Many marketers, however, now feel that the system of government controls which were eliminated in January of 1981, have been replaced with a series of equally onerous, inflexible controls by suppliers. With their backs to the wall, marketers may have no recourse but to seek some form of government involvement.

It has been stated many times that jobbers have available recourse under existing laws if they feel a certain refiner-supplier is imposing predatory actions upon the jobber. However, no single petroleum marketer, or even an association of marketers can afford a costly and lengthy federal antitrust lawsuit in pursuit of equity. As you are aware, a Federal Trade Commission complaint against the eight major oil companies was dropped last year after millions of our tax dollars were spent and after eight years of pre-trial activity. Small business petroleum marketers simply do not have the resources to engage in a costly, time consuming legal battle with the Goliaths of the petroleum industry. There is irony in all this; the same federal antitrust laws which were designed to protect small businesses from predatory competition also prohibit small businessmen from acting in concert through an association to address the common grievances of a given supplier.

Thank you, Mr. Chairman, for your continued interest in our problems and I will be happy to answer any questions you may have.

DRAFT

JOBBER FUNCTION PAPER

A petroleum jobbership is an independent business which typically performs both the wholesale and retail functions in the motor gasoline distribution process. Jobbers who sell product under the trademark of their refiner-supplier are termed "branded" jobbers; those who sell under their own private brand name are termed "unbranded" marketers.

The wholesale function begins with the bulk acquisition of product, usually at a refinery terminal. From the terminal, jobbers transport the product in their own vehicles, then distribute the product to various wholesale accounts which resell the product to the ultimate consumer. Jobbers also store product at their own bulk plants, extend credit to their customers and perform several other wholesale functions. The vast majority of wholesale gasoline is sold through independent service station dealers and other types of independent retail outlets.

The retail function of jobbers includes the ownership of service stations or retail outlets and sales directly to the consuming public, the management of salary-operated outlets, and sales of product to bulk end users such as farmers, ranchers, local governments and commercial enterprises.

Jobbers earn their margins by performing services for their customers which their suppliers would otherwise need to perform. Jobbers exist because they can perform these services more efficiently than can their suppliers. The supplier has traditionally paid for these jobber services by establishing a two-tiered pricing system. One tier is generally the benchmark price called the "tank wagon" price (when delivered from terminal to retail by the refiner) and the other lower priced tier is referred to as the jobber buying price (when sold to a jobber transport vehicle at the terminal). The difference between the two prices is called the jobber margin. The jobber margin varies with the functions performed, the jobber contract, and, to some extent, with the volume of sales. The jobber margin is expressed in cents and fractions of cents-per-gallon, not as a percentage of the price of the product. The jobber margin will vary by refiner.

Generally jobbers buy product from a refiner and transport the product from the terminal, designated by the supplier, to their bulk plant and retail dealers and customers. The supplier usually accords jobber margins based on the number of functions performed by the jobber.

Some refiners charge a delivery price when they transport product (FOB at the jobber bulk plant) and some suppliers offer a hauling allowance if the jobber accepts delivery at the terminal and transports the product. The recent trend has been for the refiner to establish just one "terminal price" for product transferred at his terminal no matter who is the customer. If a hauling allowance is provided by the refiner it approximates the cost of hauling from the terminal to the jobber's bulk plant. Hauling allowances are offered by some suppliers so that their product will be able to be sold competitively in distant market areas where jobber customers are located.

The jobber may haul product in large transport loads (8,000 gallons or more) to his bulk plant for storage and/or for transfer to smaller trucks (less than 2,500 gallons) used to haul product to retail outlets, bulk end users, such as commercial accounts and farms, which often cannot be served with large transport loads. As hauling allowances diminish or are eliminated by some suppliers, a jobber tends to deliver more transport loads directly from the supplier's terminal to his dealers.

The dealers served by a jobber usually lease their stations from the jobber (lessee-dealers) and pay a base rent with an additional incentive factor based on gallonage sold. Some dealers (open dealers) own and operate their own service stations. Jobbers also own and operate some retail outlets (direct-operated outlets) with their own salaried employees.

Margins Vary

According to published reports, the national average wholesale margin has shrunk from about 4¢ to 2.0 - 2.5¢ per gallon since 1976 (a decline from 13 percent of 1976 gasoline prices to 2.5 percent of 1982 prices). These figures are averages, however, and margins tend to vary from one jobber to another.

Consider volume. If cost is amortized over a large number of gallons, a low margin is possible. If cost is recouped in the sale of a small number of gallons, the margin must be larger to cover fixed operating costs. Thus, even the margin for similar functions can vary from one wholesaler to another.

Margins also vary with location; urban margins are normally smaller than rural ones. In part this results from larger urban volumes, but it also comes from the limited number of functions which some wholesalers assume for their suppliers in large cities. Non-branded independent marketers are generally concentrated in the largest urban/suburban markets where they offer a minimum of services, enjoy close proximity to terminals, and amortize their costs over extremely large volumes often sold through a chain of many retail outlets. In contrast, branded jobbers are concentrated in the smaller cities or towns and provide the vast majority of fuels to rural/agricultural America. The typical branded jobber supplies about eight retail outlets which are usually equipped to provide both self-service and full service; the average jobber haul from terminal to bulk plant is 45-50 miles making bulk plant storage an essential regulator of supply, and jobber stations sell, on average, less than 50,000 gallons-per-month.

The vast majority of branded jobbers are located in rural areas where they provide more services and must amortize costs over smaller volumes. The bulk of the non-branded independents serve urban markets with fewer functions and larger volumes. This weighing of the averages, one to "bare-bones" urban marketers, the other to rural marketers, creates a widely differing average margin structure.

Where branded jobbers own and direct-operate retail outlets their margins are comparable to those of the non-branded independent. And, in those instances where non-branded independents serve a rural market, generally speaking a margin larger than the typical urban margin is necessary to recoup the costs incurred in providing the variety of additional services required by the rural and agricultural consumer. Because of these costs, industry experts and plain good business sense agree that the average branded or unbranded independent marketer operating in the most rural parts of America and performing both wholesale and retail functions needs to recover a margin comparable to that of the average branded jobber and average branded dealer combined in order to remain a viable competitive force in the marketplace.

The Gasoline Functions

As a practical matter and under the Anti-Trust laws, the relevant question is not the cents-per-gallon or percentage of cost margin of the average gasoline wholesaler, but rather, what functions does he perform to earn whatever margin his market permits? In the discussion which follows we will list some of the main functions gasoline jobbers perform to earn the wholesale margin. As just explained, not every jobber performs each function listed, but each jobber typically performs more than enough of these functions to properly earn the margin accorded by his supplier.

Capital Investment

Virtually all jobbers own the land, buildings, and storage tanks at their bulk plants. They also own the land, buildings, equipment, pumps and tanks at the 7-8 retail outlets which they lease to dealers.
Each independent jobber employs, on average, a total of some 19 personnel. Jobbers, on average, own 4-5 large transport trucks and smaller tank wagon trucks used to pick up and deliver gasoline plus another 4-5 service vehicles. These are expensive assets. Our members estimate that a new retail outlet costs approximately $225,000 or more. The average jobber bulk plant would probably cost more than half of a million

dollars to replace today in order to comply with all applicable regulations. New tank wagon trucks meeting all federal regulations cost an average of $45,000 and new transports cost an average of $85,000. These capital goods are consumed in performing the wholesaler's function, so the wholesaler must earn the necessary replacement capital. Moreover, the jobber must earn a reasonable return on these investments; and occasionally this return does not begin until nearly a decade after a site is purchased for future development as a retail outlet.

Bulk plants serve commercial and farm accounts and are used to supply retail outlets. There are also some service stations which can only be reached with a 2,500 gallon tank wagon (or smaller vehicle) rather than an 8,000 gallon transport. Moreover, the inventory at the bulk plant provides an important cushion for dealers when extra transport deliveries cannot be scheduled (especially in severe winter weather). The continuing role of the bulk plant in gasoline distribution is more significant in rural areas farthest from terminals, which is one of the reasons rural margins tend to be larger than urban ones. Hence, at least part of the cost amortization and return on investment or bulk plants must come from the jobber margin on sales to dealers and in sales through his own direct-operated retail outlets.

The costs of retail outlet equipment, pumps, pump computers, underground tanks, digital equipment, signage, etc., are also amortized as part of the jobber's margin.

Additionally, the jobber businessmen take on their fair share of financial risk in marketing petroleum to customers who purchase the branded product of the jobber's refiner-supplier.

Credit Cards

More recently, the finance cost of oil company credit cards is being absorbed by the jobber who must, in many cases, pay a 2.5%-4% surcharge on customer credit sales which cannot, according to law, be passed through to the consumer. The cost of extended credit payments, or "float", on bank credit cards is also defrayed within the jobber's margin.

Transportation Costs

We have noted that in some instances refiners provide a margin to jobbers for the cost of hauling products from the terminal to the bulk plant. But, in recent times, refiners have either eliminated such allowances or have failed to keep allowances in step with rising costs. In many cases refiners are converting to FOB terminal pricing which eliminates the hauling allowance altogether. As a result jobber margins increasingly support the entire function of transporting product, from terminal to bulk plant and from bulk plant to customers.

Remember too that a jobber's transportation costs include hauling gasoline from the bulk plant to a customer - a cost never covered by any refiner allowance. This cost is present even when product is transported directly from the terminal to a service station because those refiners who grant allowances only compensate for the distance between the terminal and the bulk plant. Even in urban areas this transportation cost averages from 1.4¢ to 1.5¢ per gallon.

Service Station Rents

Dealer rents charged for retail outlets do not always provide jobbers a reasonable return on their real estate investment. According to industry experts familiar with these types of leasing arrangements, most dealer lease agreements prescribe a base station rent per month, and in some instances, a gallonage rent premised on a cents-per-gallons/sold basis to provide the dealer with increased sales incentives. In order to assist his dealers in meeting the competition, the wholesaler-lessor may, from time to time grant temporary rent allowances to them from his own margin, thereby foregoing a substantial portion of his normal return on investment. Even where the jobber leases a station from his supplier, and subleases it to the dealer, the jobber usually charges the dealer less than he is himself paying to allow his the dealer a reasonable profit.

Not all service stations are new, but the techniques of marketing (self-service, car washes, convenience stores, electronic computer equipment, etc.) are changing so rapidly that the costs associated with the development of new and reconditioned outlets are expensive.

Volume Buying

A portion of every jobber's discount is a cost justifiable quantity discount. Jobbers purchase large quantities of product on a regular schedule which effects savings to refiners. Jobbers also provide refiners with a complete distribution system often bearing the refiner's brand. The large minimum volume commitments in jobber contracts facilitate the construction of new refining capacity by assuring refiners of a reliable, continuing market for their products. Many jobberships have been marketing branded products for the same refiners for more than 50 years.

Government Regulations

As the owners of several retail outlets, at least one bulk plant, and ten vehicles, and as the employers of some 19 people, jobbers bear a variety of expenses to comply with federal, state, and local government regulations. At the federal level, these programs include payroll taxes and benefits, excise tax collection and remittance, the mandatory installation of lead-free equipment and continuous testing of the lead content of gasoline; Occupational Safety and Health Administration regulations; spillage prevention and control measures; the installation of vapor recovery equipment and many other regulations regarding employees and equipment.

Inventory Financing

A number of jobbers supply their retail dealers on "consignment", retaining title to gasoline until it is sold to the public. As a result the jobber assumes the cost of the money borrowed (or interest foregone) to purchase and hold large volumes of gasoline for his consignee-dealers. Even where the jobber sells to a dealer, he must finance his bulk plant inventory and the product which is in transit. And, customarily, jobbers pay their suppliers within 10 days of purchase, far more promptly than they are paid by their dealers and bulk end user customers. Present interest rates are, on average, two points over the prime rate for small business jobbers who must borrow to finance inventories; the tripling of product cost since 1973 makes the inventory financing function of jobbers even more valuable to suppliers than in the past.

Dealer Assistance

Jobbers provide a wide variety of services to their tens of thousands of dealers which refiners would otherwise need to offer. Jobbers schedule regular deliveries which assure the dealer a continuous and adequate supply. They select and train their dealers, often with greater success, in terms of continuity, than refiners experience. Jobbers provide continuing dealer assistance with merchandising, maintenance, bookkeeping, and advertising both at the station and in local media. They purchase signs for their dealers for which refiners normally charge the dealer a rental fee. And, jobbers conveniently warehouse tires, batteries, and accessories (TBA) for their dealers - a function which facilitates the dealer's operation even though it is a separate profit center. This is becoming an increasingly important service because refiners are more frequently using regional warehouses which necessitate larger dealer TBA inventories.

Other Functions

There are a variety of other functions including procurement of a tax bond and insurance which must be performed by whomever assumes the wholesaler's duties.

While it is not a function in a technical sense, the granting of temporary competitive allowances to dealers by jobbers is frequently a critical activity. Particularly in times of fierce competition, jobbers may reduce the dealer buying price below a refiner's posted DTW to assist their dealers in meeting competition in a given market area. This practice can result in temporary but significant losses for the jobber, but it is necessary to retain viable dealers, to preserve good customer relations, to keep volume high enough to cover fixed costs, and to protect the jobber's long-term investment in a retail outlet.

Finally, jobbers serve their communities. On a national average, 28 percent of jobber volumes supply farms and commercial accounts. The bulk of this business, however, is concentrated among rural jobbers for whom farm and commercial business is often more than one-half of their annual volume. Much of this rural/agricultural business is in areas which refiners cannot efficiently serve on a direct basis, and yet it is critical to the nation's food supply and to rural commerce.

OIL EXPRESS October 4, 1982
exclusive report serving informed petroleum marketers nationwide

Gasoline Price Barometer

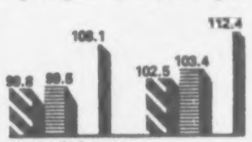
Cheap gasoline, for months the province of major refiners and their jobbers, is starting to turn up in the hands of independent refiners, brokers and traders again.

Their new-found price edge has its roots in the falling spot markets. At the Gulf Coast regular grade has cracked 92cts gal. At New York and Group 3 spot markets the range is 93-94cts.

These numbers provide the leverage traders need to compete with refiners. In the Midwest, the traders are already being heard from.

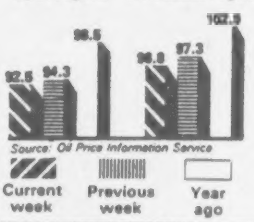
Lincoln Land has regular for 95cts. Apex is quoting even lower numbers in Indiana. Ditto for Continental Ozark in Arkansas. Spruce is competitive in Missouri, Oklahoma and Kansas.

AVERAGE NATIONWIDE DTW
(in cts/gal)



Source: Oil Express

AVG. SPOT/WHOLESALE PRICES
(in cts/gal)



Source: Oil Price Information Service

Oil Express survey finds

Jobber-dealer spread off 44% in 18 mos.

Suppliers have reduced jobbers' functional discount--the difference between rack price and direct-supplied dealers DTW--by 44% since federal controls on gasoline were lifted 18 months ago, an Oil Express survey indicates.

The cut in the jobber discount is just "one part of the distribution puzzle" that's also squeezed dealer and refiner margins to near zero, one oil company VP says.

"I don't think any marketer--refiner, jobber, or dealer--can expand margins" until the economy recovers or a whole lot of people go out of business, he says. And that process will take another full year, he notes.

Margin cuts vary widely by supplier and geography. Some examples:

Supplier	State	Functional discount in ct/gal Feb. 1981	Today
Exxon	New York	4.25	2.50
Mobil	Ohio	3.07	1.70
Gulf	Florida	3.50	3.00
Texaco	California	3.50	1.75
Exxon	Texas	3.25	2.50

Look at our new price charts

At readers' request, we have totally revamped and expanded our price charts on pages 7 and 8. The charts now show rack and dealer tankwagon prices for dozens of suppliers at 22 key locations across America.

The prices are provided to us by Oil Price Information Service (OPIS) through its daily updated PetroScan electronic pricing system. Prices shown in each Monday's issue of Oil Express include price changes confirmed by OPIS as of 6 p.m. the previous Thursday. The prices do not include taxes or discounts. Suppliers' terms are also listed. When, for instance, a 1-10 term is shown it indicates a 1% discount for payment within 10 days.

Will refiners dump 'gas' at year's end?

There are growing indications that fall 1982 will feature a repeat of the gasoline dumping that battered many markets in fall 1981.

Last year, independent and major refiners slashed inventory in a year-end rush to boost paper profits and adjust "gas" levels for operating purposes. From October through December, spot and contract gasoline prices

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LUNDBERG LETTER

Weekly Vital Statistics and
Analysis in Oil Marketing

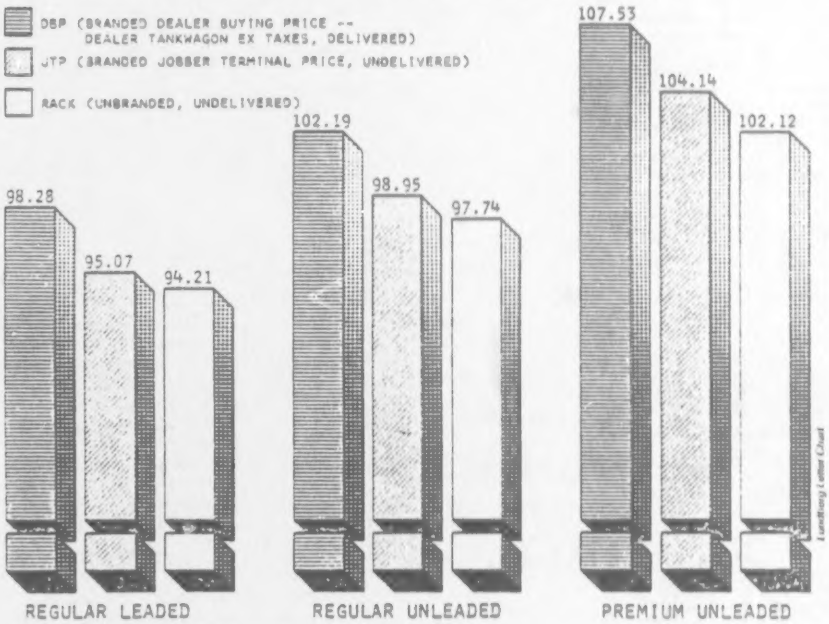
Published Fridays

VOLUME X NUMBER 3
NOVEMBER 19, 1982

Changing Wholesale Gasoline Price Structures

THE NEW LOOK IN JOBBER MARGINS

THREE WHOLESALE GASOLINE PRICE LEVELS: DBP, JTP AND RACK
U.S. AVERAGES, CENTS GAL., NOVEMBER 16, 1982



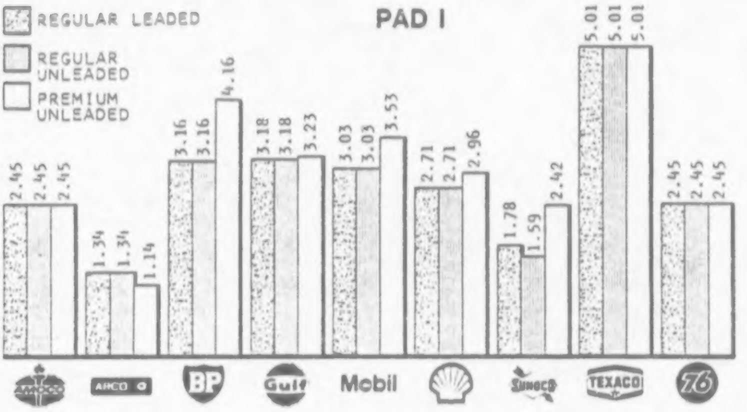
Source: Lundberg Survey, Inc.

WHAT ARE JOBBER MARGINS TODAY? Wholesale gasoline pricing is in a state of shakeout, with the traditional jobber discount (off dealer tankwagon) and hauling allowances drying up. Will the difference between the jobber terminal price, and the price branded dealers pay for delivered product, enable jobbers to continue supplying rural, commercial, agricultural, and service station accounts where alternative sources of supply exist?

THE DBP-JTP* DIFFERENTIAL

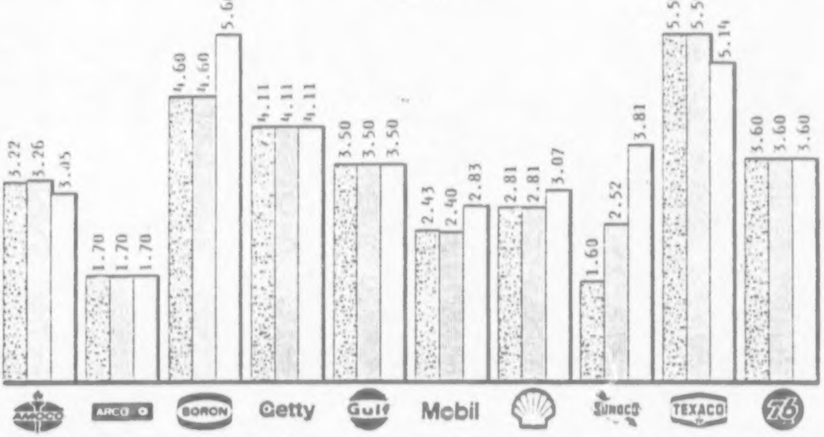
AVERAGES REFLECT CITIES WHERE MAJORS SELL GASOLINE AT BOTH PRICES

CENTS GAL., NOVEMBER 16, 1982



PAD I

Lundberg Letter Chart



PAD II

*DBP = Dealer Buying Price (Dealer Tankwagon ex taxes); JTP = Jobber Terminal Price.

Changing Wholesale Gasoline Price Structures

THE NEW LOOK IN JOBBER MARGINS

TWO TRADITIONAL ELEMENTS in gasoline jobbers' margins are to a great degree being withdrawn from wholesale price policies of major suppliers. The old discount off Dealer Tankwagon (DTW), and the hauling allowance, are being structured out. Something else, something that branded distributors can count on as the staple upon which to build future profit margins, is being structured in.

That something is identified by the process of elimination.

Independent distributors carrying the brand name of their major suppliers continue to bring fuel supplies to urban and rural accounts in commerce, small industry, agriculture, and retail service stations where majors cannot do so efficiently and economically. The performing of this vital service, while seemingly not threatened by major oil company pullouts from many parts of the country over the last few years, is vulnerable to emerging wholesale price policies. Jobbers warn that many of their consumers could be left high and dry if jobbers cannot look forward to stable and profitable relationships with major suppliers.

Jobber margins often had three elements guaranteed: the jobber discount, the value of product delivery, and the markup to end users. For years, jobbers could count on a structured discount off the Dealer Buying Price (DTW, ex taxes). This Jobber Buying Price was either for product delivered, or, if not, adjusted with a compensatory hauling allowance so the jobber could deliver product to markets where such competitive edge was required to maintain share of market for the major.

This report does not attempt to quantify the jobber markup, which is comprised of so many variations by customer class and, if the jobber is also a retailer, variables in economy-of-scale. What we are quantifying is the terminal price edge for branded jobbers over the dealer buying price for branded dealers.

The DBP-JTP Differential

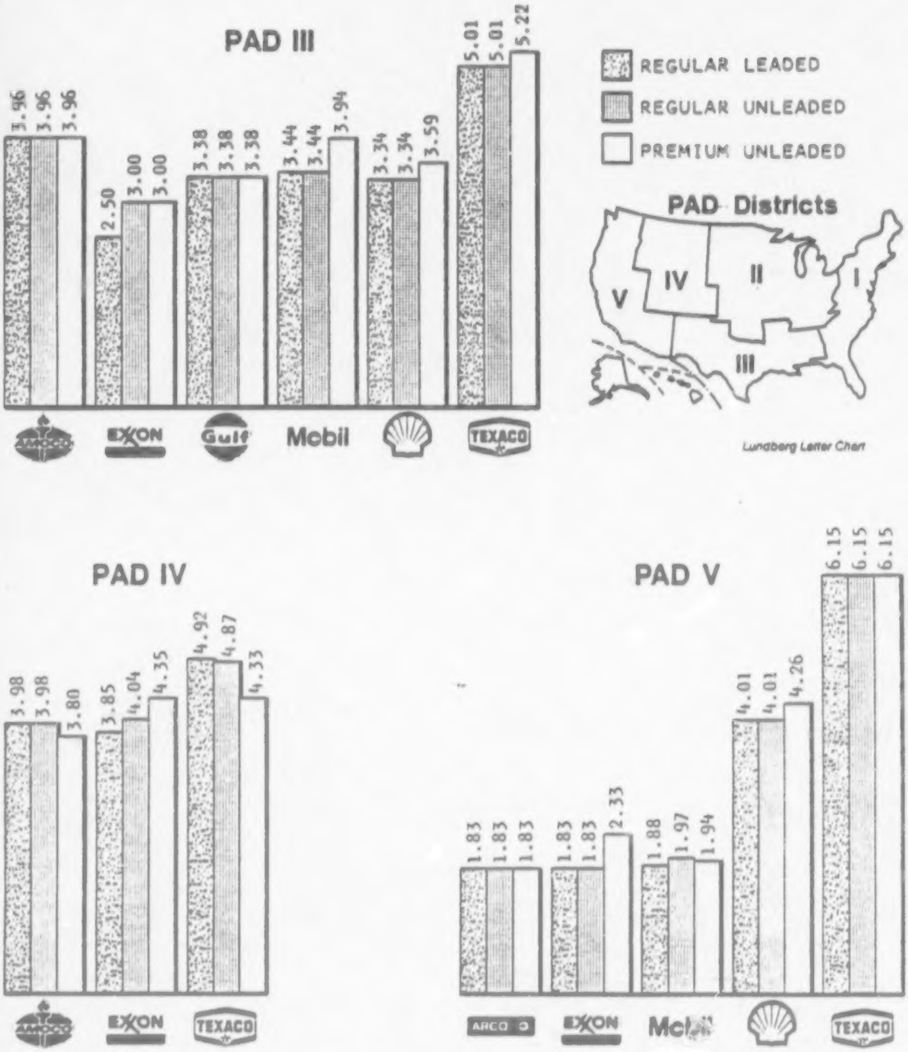
Terminal pricing has been cited as the wave of the future. It's already quite widespread. In a canvass of major brand wholesale pricing structures across the country, we found that out of 185 markets, 110 had this in common: major oil companies are supplying their lease dealers directly, and selling gasoline to jobbers at the terminal, at a branded, but undelivered, price.

While various major oil companies state that DBP is not a reference point from which to derive a jobber discount, and state that, in fact, their jobbers mainly serve outlying areas and therefore have no competitive connection with the their direct dealer operations, this differential is the only thing left jobbers can look to as a reference point -- if they serve the same markets that are supplied by direct dealers associated with the same major oil company.

This differential, while not the jobber margin, is a chunk of it. In some cases, where competition is eroding the jobber's product markup, it may actually be the margin! The front cover graph shows where the average U.S. JTP sits under the average DBP -- and how average rack sits below the JTP, just 0.86¢ gal. away for regular leaded.

THE DBP-JTP* DIFFERENTIAL

AVERAGES REFLECT CITIES WHERE MAJORS SELL GASOLINE AT BOTH PRICES
CENTS GAL., NOVEMBER 16, 1982



*DBP = Dealer Buying Price (Dealer Tankwagon ex taxes); JTP = Jobber Terminal Price.

What isn't shown on the front cover is the average branded jobber delivered price for gasoline, known as the JBP (jobber buying price). It's a disappearing fixture, with few such prices posted by majors in our survey of 185 cities and it actually came out higher than JTP. The few citings are from the entire sample, not matched to the DBP-JTP samples. For the record, here are U.S. average delivered prices to jobbers:

U.S. Average JBP by Grade, Nov. 16, 1982

regular leaded: 94.34¢ gal.
regular unleaded: 98.30¢ gal.
premium unleaded: 103.35¢ gal.

Searching for Universals

To see how major oil companies are manifesting new wholesale pricing policies with regard to terminal pricing for their jobbers, see the charts on pages 2 and 4. Each PAD District chart shows the average price differences by grade between the Dealer Buying Price and the Jobber Terminal Price, for those majors that have both in our city samples. PAD I has nine company averages for the cities where each major has both price stuctures in action. PAD II has 10 such company averages; PAD III has six; IV just three; and V has five.

The greater differences that Texaco averages show, compared to almost all other brands in all PADs, may be due in part to that company's having eliminated hauling allowances across the board. However, some other company averages contain few cities where hauling allowances are common. It could be tempting to compare differentials by brand based on whether a hauling allowance were present; but the variations in existing hauling allowances (see LL 6/04/82) prohibit coming up with any realistic average haul value for either regions or brands.

The differential for premium unleaded gasoline is frequently greater than for regular grades.

(In the course of our research we noted many jobber terminal prices for diesel available from major suppliers that didn't have terminal prices for any grade of gasoline. These were, notably, at Exxon, Mobil, Union, and Amoco terminals.)

Regional averages narrow the picture of DBP-JTP differentials: The entire range of grades by PAD District lies between 2.90¢ gal. and 4.27¢ gal. The table below shows average DBP-JTP differentials by PAD District, for three grades of gasoline.

DBP-JTP Differentials by PAD District, Cents. Gal., Nov. 16, 1982

	I	II	III	IV	V
Regular Leaded	2.92	3.29	3.54	4.25	3.23
Regular Unleaded	2.90	3.38	3.68	4.27	3.25
Premium Unleaded	3.12	3.56	3.80	4.06	3.38

Meanwhile, the national average differentials between DBPs and JTPs create an even tighter picture: they are between 3 and 3.5 cents per gallon for all three grades:

U.S. Average DBP-JTP Differential, Nov. 16, 1982

regular leaded: 3.21¢ gal.
regular unleaded: 3.24¢ gal.
premium unleaded: 3.39¢ gal.

Where the Competition Is

The effects of terminal pricing on jobbers, now that the traditional discount off DTW and the hauling allowances are no longer to be counted on, may be an important reason why some jobbers are now pulling product from as many as a dozen different suppliers. In playing the field, which many say is a defensive action against supplier pullouts and new wholesale pricing priorities of suppliers, they can "ride the toboggan down" with those known to drop price quickly under pressure, "then ride up with those that drag their feet restoring prices," as one multi-brander put it.

Many a major oil company source consulted was quick to point out that jobber terminal prices have nothing to do with dealer buying prices, because jobbers generally haul product to outlying areas, away from urban retail markets.

But jobbers supplying to retail, either through lease dealerships or direct jobber-owned service station businesses, are seriously impacted by the proximity of their buying prices to those their suppliers give their direct-supplied lease dealers and major-owned stations operated by salaried personnel. This depends, of course, on the extent of retail territory overlap.

The real competition, majors note, is between jobber terminal prices themselves.

It's not so simple: The shakeout of hauling allowances, fine tuning them, eliminating them, and making exceptions to emerging freight cost policies, makes each jobber evaluate the specifics of each wholesale price structure for each market, on a terminal-by-terminal basis. And each supplier tunes the emerging structures according to the economic attractiveness of jobber services for each area.

Market specifics continue to make it difficult to detect universal principles at work in terminal pricing. But it stands to reason that the newly quantified differential between the branded, undelivered jobber terminal price for gasoline -- and supplier- branded, delivered dealer buying price -- has largely replaced the old discount off DTW that so many majors say is no longer justified. This differential is the staple diet jobbers increasingly must live on. It's basic to the jobber margin. And it's under 3.5¢ gal. for the nation.

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Alabama Petroleum Marketers Association, Inc.

• • LET MARKETING DETERMINE THE FLOW • •

November 8, 1982

STATEMENT ON MARKETING PRACTICES IN THE PETROLEUM INDUSTRY IN THE STATE OF ALABAMA

The following statement is submitted by the Alabama Petroleum Marketers Association regarding marketing practices in the petroleum industry in the state of Alabama.

TYPE OF MARKET

The petroleum market in Alabama is a combination urban and rural one. Major urban markets are Birmingham, Huntsville, Montgomery and Mobile. In addition to retail outlets the market consists of all type consumer accounts including farmers, coal mining, trucking and various industrial businesses. Over thirty refiners or suppliers serve the state either through their direct operations or through jobbers or subsidiaries.

MEMBERSHIP OF THE ALABAMA PETROLEUM MARKETERS ASSOCIATION

One hundred and seventy-six (176) companies comprise the membership of the Alabama Petroleum Marketers Association. The average member employs six people and sells three million gallons of gasoline and distillates per year. The members of the Alabama Petroleum Marketers Association sells approximately 45% of the gasoline and 30% of the middle distillates sold in Alabama.

During the past six months fifteem members have been lost due to closings or merges and it is anticipated that an additional 20% will be lost in the next twelve months due to the inability to make an adequate profit and meet the competition of some refiners and suppliers.

PROBLEMS FACING JOBBERS IN ALABAMA

Major problems facing petroleum jobbers in Alabama are:

Predatory pricing - suppliers selling to their direct operated stations at prices at or below jobber buying prices.

Suppliers soliciting consumer accounts being served by their own jobbers and undercutting prices.

Credit card sur-charges - inability of jobbers to pass through to dealers and consumers.

Elimination of hauling allowances.

Elimination of historical cash discounts.

Changes in credit terms by suppliers creating severe cash flow problems for jobbers.

Stringent requirements by suppliers regarding contract volumns thus preventing jobbers from purchasing from other sources at lower prices.

NAMES

The president of the Alabama Petroleum Marketers Association is Jack C. Lawley; the NOJC director is W. C. Rice and the executive vice president is Fred D. Long.

ARIZONA
Oil Marketers Association

AFFILIATED WITH INTERMOUNTAIN OIL MARKETERS ASSOCIATION
1800 South West Temple, Suite 300
Salt Lake City, Utah 84115
(801) 484-8719

November 19, 1982

RE: REPRESENTATIVE BERKLEY BEDELL & HEARINGS ON SUPPLIER RELATIONS

ARIZONA OIL MARKETERS ASSOCIATION

The Arizona Oil Marketers Association represents approximately 200 gasoline and diesel fuel distributors within Arizona. These marketers sell petroleum products at both wholesale and self-service retail. Their sales represent an estimated 65% of all the petroleum products sold in the State. Members range in size from small rural family businesses to large multi-location self-service businesses.

Arizona has only one small refinery. Nearly all of the petroleum consumed in Arizona, therefore, is imported through pipelines with a considerable amount also trucked into the State. As a result, Arizona has been a traditional dumping ground by which cheap surplus product is brought into the State. Conversely, during periods of shortages, Arizona feels the pinch first and most severely.

Most major oil companies market in Arizona through jobbers, dealers, and some through direct operations. Such majors as Arco, Chevron, Exxon, Mobil, Shell, and Texaco market alongside of independents in the State.

The atmosphere in Arizona with its innovative businesses and population growth has made this market particularly competitive. This in part has caused the high percentage (81%) of self-service gasoline sold in the State making Arizona the second highest in the country.

Within the last year the competitiveness of this business has increased to the point that many independents are about to go out of business.

This has been caused in a large measure by the major oil companies changing their traditional role in the market place. This change began when Texaco changed their policy of many years from accepting credit cards taken by jobbers and dealers at no charge to a policy of charging jobbers and dealers for the use of credit cards. Exxon followed by doing the same thing but adding a discount-for-cash program which they pushed through their dealers. Exxon gave favorable prices to dealers as an incentive to retail cash-discount in order for dealers to compete with independents and/or sell below independents.

Arco joined the battle by doing away with their credit card completely and giving guaranteed margins to their dealers which encouraged them to sell below the competition. The final chapter is that Shell and Chevron have announced their intent to take all credit cards including Arco's.

The result is a classic battle between large multi-national companies competing on the street at a price that the independent cannot meet without selling below costs. It is feared that if the industry giants continue to battle each other much longer, the life of the independent distributor/retailer will be over.

The concern that the consumer ought to have is that without the independent distributor/retailer in the market place, the giants will return to a more profitable position which will translate into higher prices than necessary.

The concern is very real. With the independents experiencing a negative profit and with the large reserves the giant oil companies have, the independents will not be able to stay in business much longer.

Respectfully,

Gerald Tedrow

Gerald W. Tedrow
Executive Director

GWT:pw

cc: Bob Kec, AOMA President
c/o Mountain States Petroleum
Phoenix, AZ

G. L. Calvert, AOMA NOJC Director
Calvert Oil
Buckeye, AZ

Andy Pala
AOMA Field Director
Phoenix, AZ

Arkansas Oil Marketers Association

November 12, 1982

OFFICERS
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DON HAMILTON
Fort Smith
VICE PRESIDENTS
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W. Memphis
Stephen Lee
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Raymond Mitchell
Fayetteville
Blaine Richardson
Harrison
F. L. "Butch" Robertson
Fayetteville
Bill Russell
Rector
M. H. "Twig" Satterfield, Jr.
Conway

Arkansas probably fits into each of the three categories used by those who study petroleum marketing and our jobber-members are similarly divided. That is to say - parts of Arkansas are at least semi-urban - with substantial rural and rural-suburban characteristics.

At this time, our major branded suppliers are: Citgo, Champlin, Conoco, Delta, Exxon, Fina, Gulf, Kerr-McGee, Mobil, Phillips, Shell, Sun, Texaco, and Union 76. Amoco has just pulled out of the market - - - Chevron has just come in. In the past 18½ months, Skelly-Getty has also pulled out and Sunoco has pulled its brand in parts of Arkansas but continues to supply branded in part of the state and considerable product on an unbranded basis elsewhere. Other unbranded suppliers have included LaGloria, Tosco, Delta Refining and Triangle.

At the end of 1981, we had 187 dues-paying members. So far this year, 169 have paid. The market pressures which have caused problems for these members - those who have paid and those who will pay - is probably symptomatic of all marketers, including the half-dozen who have been forced into either bankruptcy or a reorganization procedure.

Credit card surcharges are as prevalent in this market as they are across the country. And the coincidental actions resulting in credit-card surcharges, partially compensating pricing changes and "discount for cash" programs make it extremely difficult to arrive at an evaluation of any one by itself.

Another indicator of jobber problems is the willingness of marketers to use the once-avoided words "divestiture" and "divorcement".

While AOMA has not endorsed either approach, it did vote to pursue avenues of possible resolution of jobber problems, and particularly those resulting from "unfair direct-marketing practices" on the part of refiners.

Gene Goss, Executive Vice President
Don Hamilton, President
A. B. Littlefield, NOJC Director

P. O. BOX 229 • LITTLE ROCK, ARKANSAS 72203
EXECUTIVE OFFICES • SUITE 916 • 103 WEST CAPITOL • LITTLE ROCK, AR • TELEPHONE (501) 374-6293
EXECUTIVE VICE PRESIDENT
GENE GOSS

California Independent Oil Marketers Association
555 CAPITOL MALL, SUITE 755, SACRAMENTO, CA 95814, (916) 441-5186 JIM DIVINE, Executive Vice President

November 17, 1982

Mr. Phil Chisholm
National Oil Jobbers Council
1707 H Street, N.W.
11th Floor
Washington, D.C. 20006

Dear Phil:

We are stating, hereunder, a brief description of the make-up of our membership and some of the market problems they are facing today.

Our organization represents the entire state of California, urban, rural and suburban- Northern, Central and Southern areas all served principally by the same suppliers. Refiner suppliers include Chevron, Exxon, Shell, Arco, Union, Texaco, Getty, Beacon, Fletcher. Terminal operators and/or blenders are Landsea, Amorient, Wickland.

Our marketer members who number approximately 300, average 7 million gallons of gasoline and distillates per year. They supply about 5,000 retail outlets, 20,000 farm accounts, and 25,000 industrial and commercial accounts. 65% operate bulk storage plants. 55% sell under a private brand label, with 45% flying the flag of their refiner-supplier. Independent marketers in California supply approximately 20% of the market share of gasoline and distillates.

Reporting on the general conditions of the petroleum market in California shows that the price of major refiners is ignoring the jobber function. Their emphasis on the retail market has compressed the jobber margin to the extent that it ceases to exist, eliminating the jobber. This has been caused by the fact that in order to protect the retail market, the majors have allowed discounts and a rebate program to their retail dealers but not to the jobbers. This has not only affected retail outlets, but also the inability to perform a competitive service to commercial accounts. It is strongly felt that this problem is long-term not for a short duration.

The present market condition appears to have commenced with the elimination of the jobber by Arco in eliminating the credit card, eliminating the hauling allowance and discontinuing credit terms. Arco's actions are truly a concern to all segments of the industry. If we cannot compete with the retail dealer then the jobber's function will be of no value to the customer.

Respectfully submitted,

Jim Divine

Jim Divine
Executive Vice President

President
BOB SHUSTER
Shuster Oil & Chemical, Escondido

Southern Vice President
MITCH DION
M. O. Dion & Sons, Inc., Long Beach

Northern Vice President
JACK DEWAR
J. B. Dewar, Inc., San Luis Obispo

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Robinson Oil Co., Inc., San Jose

BILL KLINK
Eureka Fuel & Mineral, Bishop

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California-Fresno Oil Co., Fresno

TERRY ANDREWS
Inter-State Oil Co., Sacramento

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State Oil Co., Los Angeles

JIM INGRAM
John Slack Oil Co., Anaheim

RON AHLPORT
R. V. Ahlport Co., Watsonville

RON KING
Currie Bros., Inc., Fresno

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AL WICKLAND

MEMBER OF
nojc
NATIONAL OIL JOBBERS COUNCIL

Florida Petroleum Marketers Association Inc.
209 Office Plaza • Tallahassee, Florida 32301-2896 • Phone (904) 877-5178

November 16, 1982

For presentation to Representative Berkley Bedell and his committee at hearings scheduled for December 1 - 2, 1982.

TYPE OF MARKET

The Florida petroleum market consists of a solid combination of urban and rural consumers. Tourism and Agriculture, the two largest industries in the state, basically assures that will continue to be the case as far as the distribution of gasoline and diesel fuel are concerned.

Florida jobbers are principally supplied by the following supplying companies:

American Petrofina Company
Amoco Oil Company
Charter International Oil Company
Chevron U.S.A., Inc.
Cities Service Oil Company
U.S.A. - Colonial Oil Company
Exxon Company, U.S.A.
Gulf Oil Company
Marathon Oil Company
Mobil Oil Corporation
Murphy Oil Company
Phillips Petroleum Company
Shell Oil Company
Tenneco Oil Company
Texaco Oil Company
Triangle Oil Company
Union Oil Company

MEMBERSHIP OF FLORIDA PETROLEUM MARKETERS ASSOCIATION

The Florida Petroleum Marketers Association is a state-wide trade association consisting of some 235 independent companies engaged in the wholesale and retail sale and distribution of petroleum products. Average sales run from some 9,000,000 to 12,000,000 gallons of gasoline per year, representing more than 50% of all gallons sold in Florida.

Officers: *President*, Joe Capitano • *President Elect*, Davis Rembert, Jr. • *Treasurer*, Jim Hinton, Jr. • *Vice President of Motor Fuels*, Joe Glover • *Vice President of Fuel Oil*, Bill Call *NOJC Director*, Jimmy Weaver • *Executive Vice President*, Carl Adams

Directors: Gordon Banks • Mike Dunn • Dick Fornell • Ray Hibbard • Ed Koch • Michael Lazzara • Denny Miller • W. Guy Odum, Jr. • George Partin • Ken Powell • Arnold Rogers Steve Saboff • Bob Tew • Gabriel Volanes • E. L. Williams

The member companies are branded and unbranded operations and include Agriculture, marine, convenience store, retail consumer outlets and other commercial accounts.

PROBLEMS FACING MEMBERSHIP OR MARKET SITUATION

During the last several months, the Florida petroleum market at the street level has become a disaster. Credit card surcharges, predatory pricing, discriminatory prices and allocation policies and general attitude on the part of supplying companies to circumvent the jobber/marketer has resulted in a course of distruction for the small businessman. Although unable to predict at this point, large numbers of marketers in our association will be out of business soon if present supplier/refiner practices continue.

To cite some supplier practices: During the three-day Halloween weekend, 1982, a three-bay, company controlled branded station in Orlando, Florida posted a street price (for sale to the consumer) at $.075 below the best buying price for jobbers in that area.

During June of 1982, a branded, nationally known supplier/refiner bid on a commercial account, against his branded jobber, in Tampa, Florida. And that company bid the account at $.053 below what they would sell to that jobber!

Recently (in October, 1982) a major oil company sold #2 Diesel to a commercial account (who was buying for resale) at 2¼ cents less than they would sell to their branded jobber - and both transactions on the same day from the same terminal.

Recently in the Tampa area, several street postings by subsidiary owned outlets of a major independent supplying company were below cost of competition.

Numerous other examples of these immoral, if not illegal, activities can be documented should the committee desire additional material.

A final comment: Although, at first blush, a cheaper street price assures direct benefit to the consumer, we connot forget what happens to that price when the competition is removed.

Very truly yours,

Carl Adams

Carl Adams
FPMA, Exec. V. Pres.
209 Office Plaza
Tallahassee, FL 32301

Very truly yours,

Joe Capitano

Joe Capitano, Pres.
NCJ Investment Co.
P.O. Box 5751
Tampa, FL 33675

Very truly yours,

Jimmy Weaver

Jimmy Weaver, NOJC Dir.
Weaver Oil Company
P.O. Box 357
Blountstown, FL 32424

BI-LO OIL COMPANY, INC.

1700 SOUTH BUMBY AVENUE, ORLANDO, FLORIDA 32806 • PHONE 898-9494

[illegible] 5 1982

November 1, 1982

Mr. Carl Adams
Executive Vice President
Florida Petroleum Marketers Association

Dear Carl:

Attached hereto are three photographs of a three bay company controlled branded Texaco outlet located three blocks from my office (corner Curry Ford and Conway Road), which is retailing full service regular grade gasoline at $.999 per gallon for the three day Halloween weekend.

This is occurring at a time when our dealer tankwagon prices are as follows:

Marathon Oil - Taft - $.950 plus tax and freight
Triangle Oil - Taft - $.954 less 1% plus tax and freight
Murphy Oil - Tampa - $.950 less 1% plus tax and freight

It is obvious Carl that this Texaco unit is selling at a minimum of $.075 below our best buying price.

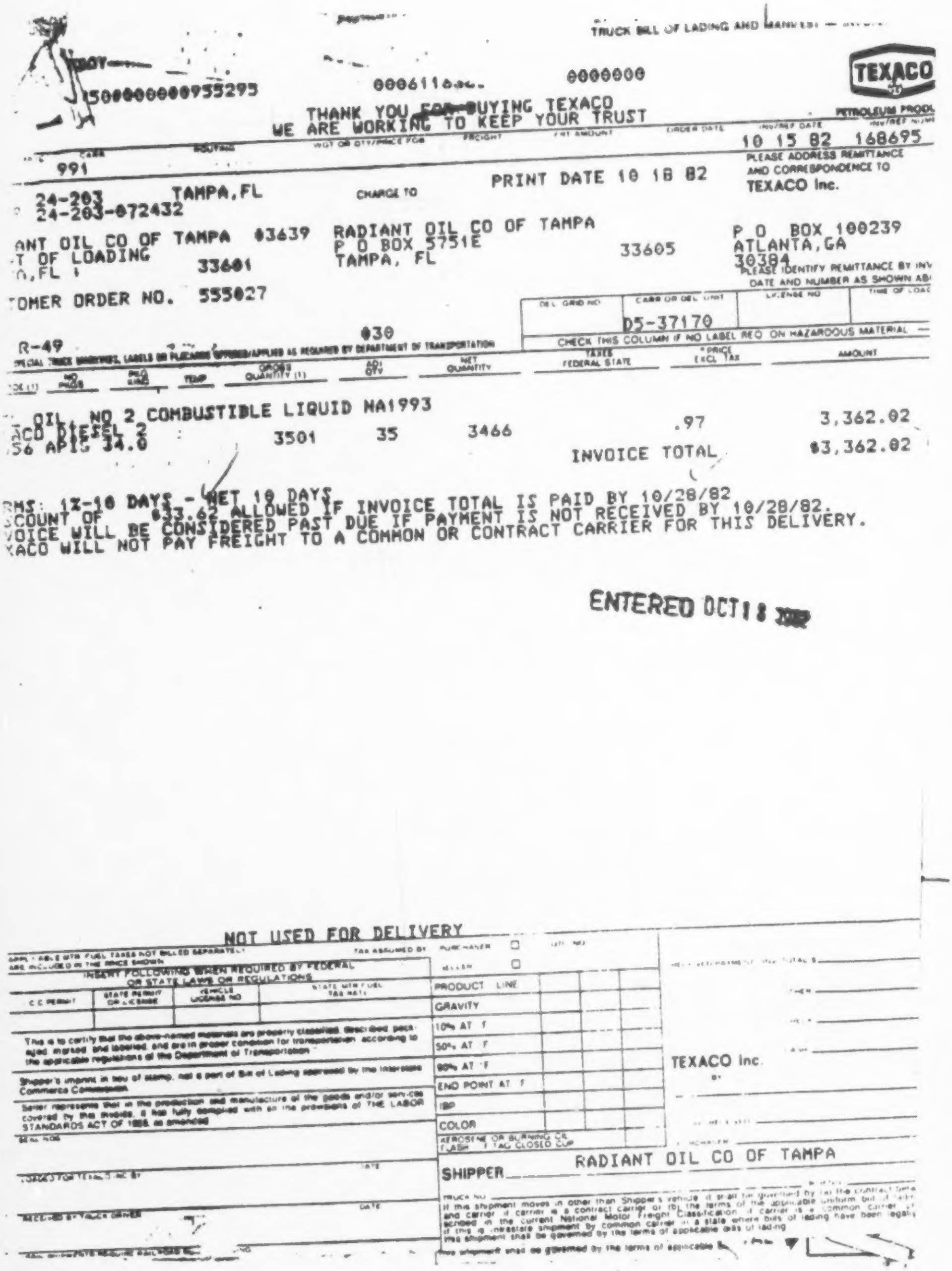
I am hopeful you can use this as another example of why we need major oil divestiture in our business.

Best regards,

Dale E. Moyer

Dale E. Moyer
President
Bi-Lo Oil Company

ENC:
CC: Wayne L. Carse
DEM/ved



TRUCK BILL OF LADING AND MANIFEST

TEXACO

PETROLEUM PROD

150000000000955295

000611

0000000

THANK YOU ~~FOR~~ BUYING TEXACO
WE ARE WORKING TO KEEP YOUR TRUST

CARR	ROUTING	WGT OR QTY/PRICE FOB	FREIGHT	FRT AMOUNT	ORDER DATE	INV/REF DATE	INV/REF NUM
991						10 15 82	168695

PRINT DATE 10 18 82

PLEASE ADDRESS REMITTANCE
AND CORRESPONDENCE TO
TEXACO Inc.

24-203 TAMPA,FL
24-203-072432

CHARGE TO

ANT OIL CO OF TAMPA 03639
T OF LOADING
A,FL 33601

RADIANT OIL CO OF TAMPA
P O BOX 5751E
TAMPA, FL 33605

P O BOX 100239
ATLANTA,GA
30384

PLEASE IDENTIFY REMITTANCE BY INV
DATE AND NUMBER AS SHOWN AB

TOMER ORDER NO. 555027

DEL GRID NO	CARR OR DEL UNIT	LICENSE NO	TIME OF LOAD
	D5-37170		

R-49

030

SPECIAL TRUCK MARKINGS, LABELS OR PLACARDS OFFERED/APPLIED AS REQUIRED BY DEPARTMENT OF TRANSPORTATION

CHECK THIS COLUMN IF NO LABEL REQ ON HAZARDOUS MATERIAL

NO PKGS	PKG KIND	TEMP	GROSS QUANTITY (1)	ADJ QTY	NET QUANTITY	TAXES FEDERAL STATE	PRICE EXCL TAX	AMOUNT
OIL NO 2 COMBUSTIBLE LIQUID NA1993 ACO DIESEL 2 56 APIG 34.0			3501	35	3466		.97	3,362.02
						INVOICE TOTAL		$3,362.02

RMS: 1%-10 DAYS - NET 10 DAYS
SCOUNT OF $33.62 ALLOWED IF INVOICE TOTAL IS PAID BY 10/28/82
VOICE WILL BE CONSIDERED PAST DUE IF PAYMENT IS NOT RECEIVED BY 10/28/82.
XACO WILL NOT PAY FREIGHT TO A COMMON OR CONTRACT CARRIER FOR THIS DELIVERY.

ENTERED OCT 18 1982

NOT USED FOR DELIVERY

APPLICABLE MTR FUEL TAXES NOT BILLED SEPARATELY ARE INCLUDED IN THE PRICE SHOWN

TAX ASSUMED BY PURCHASER ☐ SELLER ☐

INSERT FOLLOWING WHEN REQUIRED BY FEDERAL OR STATE LAWS OR REGULATIONS

C C PERMIT	STATE PERMIT OR LICENSE	VEHICLE LICENSE NO	STATE MTR FUEL TAX RATE

This is to certify that the above-named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.

Shipper's imprint in lieu of stamp, not a part of Bill of Lading approved by the Interstate Commerce Commission.

Seller represents that in the production and manufacture of the goods and/or services covered by this invoice, it has fully complied with all the provisions of THE LABOR STANDARDS ACT OF 1938, as amended.

PRODUCT LINE			
GRAVITY			
10% AT °F			
50% AT °F			
90% AT °F			
END POINT AT °F			
IBP			
COLOR			
KEROSINE OR BURNING OIL FLASH °F TAG CLOSED CUP			

TEXACO Inc.
BY

SHIPPER RADIANT OIL CO OF TAMPA

LOADED FOR TEXACO INC BY DATE

RECEIVED BY TRUCK DRIVER DATE

TRUCK NO

If this shipment moves in other than Shipper's vehicle it shall be governed by (a) the contract terms and carrier if carrier is a contract carrier or (b) the terms of the applicable uniform bill of lading prescribed in the current National Motor Freight Classification if carrier is a common carrier, or if this is intrastate shipment by common carrier in a state where bills of lading have been legally this shipment shall be governed by the terms of applicable bills of lading

This shipment shall be governed by the terms of applicable

DESTROY—THIS IS YOUR ORIGINAL INVOICE - 1 LOADING ORDER — TRUCK BILL OF LADING AND MANIFEST — INVOICE IF PRIC

01200000000001325286 000280145000000000000000

TEXACO

PETROLEUM PRODUC

THANK YOU FOR BUYING TEXACO
WE ARE WORKING TO KEEP YOUR TRUST

	ROUTING		FREIGHT	FET AMOUNT	ORDER DATE		
971						10 13 82	16628

4-203 TAMPA,FL
4-203 030064 NATL

PRINT DATE 10 18 82

ROCK INDUSTRIES 08907
LOADING
33601

R ORDER NO. 113186902

CHARGE TO

FLORIDA ROCK INDUSTRIES
AGGREGATES DIVISION
P O BOX 6984
FT MYERS FL 33901

PLEASE ADDRESS REMITTANCE AND CORRESPONDENCE TO
TEXACO Inc.
P O BOX 100239
ATLANTA,GA
30384

PLEASE IDENTIFY REMITTANCE BY INV DATE AND NUMBER AS SHOWN AB

#02

	CARR OR DEL UNIT	LICENSE NO	TIME OF LOADIN
	01-27748		

CHECK THIS COLUMN IF NO LABEL REQ ON HAZARDOUS MATERIAL

NO PKGS	PKG KIND	TEMP	GROSS QUANTITY	ADJ QTY	NET QUANTITY	TAXES FEDERAL STATE	PRICE EXCL TAX	AMOUNT
NO 2 COMBUSTIBLE LIQUID NA1993								
DIESEL 2								
IG 34.0			7500	85	7415		.9475	7,025.71
SALES TAX			7025.71				.05	351.28
						INVOICE TOTAL		$7,376.99

NET 30 DAYS
WILL BE CONSIDERED PAST DUE IF PAYMENT IS NOT RECEIVED BY 11/17/82.
WILL NOT PAY FREIGHT TO A COMMON OR CONTRACT CARRIER FOR THIS DELIVERY

NOT USED FOR DELIVERY

INSERT FOLLOWING WHEN REQUIRED BY FEDERAL OR STATE LAWS OR REGULATIONS

PURCHASER ☐

SELLER ☐

PRODUCT LINE			
GRAVITY			
10% AT F			
50% AT F			
90% AT F			
END POINT AT F			

tify that the above named materials are properly classified, described, pack ed, and labeled, and are in proper condition for transportation, according to the regulations of the Department of Transportation

print in lieu of stamp; not a part of Bill of Lading approved by the Interstate Commission

esents that in the production and manufacture of the goods and/or services this invoice, it has fully complied with all visions of THE LABOR

TEXACO Inc.

RADIANT OIL COMPANY OF TAMPA, INC.
DISTRIBUTOR TEXACO PETROLEUM PRODUCTS

NICK CAPITANO
President
JOSEPH CAPITANO
Secretary-Treasurer

P. O. BOX [illegible]
TAMPA, FLORIDA 336[illegible]

June 29, 1982

Mr. Al Derden
Texaco Inc.
P. O. Box 20734
Orlando, FL 32814

PERSONAL

Dear Al:

In the past I have complained about your #2 Diesel price in Tampa as opposed to your #2 Diesel price in Port Everglades. I want to bring to your attention a serious injustice between your consumer #2 Diesel price and your jobber #2 Diesel price. Please note that Texaco's sales people are underbidding competition by as much as 1 1/4¢ per gallon on transport business in the State of Florida.

I am sure there must be a very good explanation as to why a consumer account is able to buy #2 Texaco Diesel for .9025¢ per gallon and Texaco jobbers must pay .95535¢ including discount. The only explanation your sales people would give me was that they had to meet Gulf to get this type of business. You might not be aware, but we jobbers must also compete with competition. It is my understanding that Gulf quoted .9145¢ per gallon, Amoco bid .9420¢, Chevron - .9455¢ and Exxon - .9555¢. I suspect that this kind of price discrimination between your jobber's cost and consumer's cost is unfair and possibly illegal. Your effort in helping with this type of unfair treatment would certainly be appreciated.

A year ago under controls (DOE) you got rid of all off schedule pricing accounts by forcing them on to your jobbers. Today, because of low consumption, you have gone after this business at .053¢ below jobber cost. How can you expect loyalty from your jobbers? Our loyalty to Texaco has certainly gained us no loyalty from Texaco. These conditions make it impossible to purchase #2 Diesel from you and remain in business very long --- WE need help now.

Sincerely yours,

Nick Capitano
Nick Capitano

File

cm

GEORGIA
OILMEN'S
ASSOCIATION
GOA

404 451 5916
SUITE 8 P
3300 NE EXPRESSWAY
ATLANTA, GEORGIA 30341

November 15, 1982

TO: Phil Chisholm, Executive Vice President
National Oil Jobbers Council

FROM: Shack Wimbish, Jr., President
Georgia Oilmen's Association

RE: Preparation of Statement for Congressional Hearing on Marketing Practices

TYPE OF MARKET

In the seventeen counties (radius of 50 miles of Atlanta) are contained 60% of Georgia's population. The rest of the state, with the exception of some twelve suburan areas, would be considered rural. There are approximately 24 refiners:

American Petrofina
Champlin Petroleum
Coastal States
Delta
Hill Petroleum
Marathon
Shell
Triangle Refinery
Amoco
Chevron
Conoco
Exxon
Hess
Mobil
Tenneco
Union
Belcher
Cities Service
Crown Central
Gulf
Koch Fuels
Phillips
Texaco
Young Refining

MEMBERSHIP: THE TYPICAL GOA JOBBER

There are 425 jobbers in the state of Georgia and 70% of this total represents the membership of the Georgia Oilmen's Association.

Our members purchase 91% of their gasoline products from major branded suppliers and market 88% of the total as branded product.

The GOA members purchase 83% of their fuel oil (and diesel) from branded suppliers and market 83% of their purchases as branded products.

Fifty-eight percent of our members sell less than 5 million gallons of product per year and 27% less than 2½ million per year. Twenty-one percent sell between 5 to 7½ million gallons per year. This, therefore, represents almost 80% of our members that can be considered small jobberships.

Fifty-three percent of our members are primarily gasoline jobberships. Thirty-five percent are a combination of both gasoline and fuel oil jobberships. The balance are either classified as chain retailers or fuel oil jobberships.

Eighty percent of our members have less than 100,000 gallons storage at their bulk plants.

Ninety-three percent of our members operating expenses increased last year and forty-eight percent of our members' net profits decreased last year.

Essentially the GOA is composed of small, rural jobbers that work primarily with reseller dealers and farm and commercial accounts.

PROBLEMS FACING GOA MEMBERS:

The major branded oil companies have:

1. Imposed credit card surcharges.
2. Eliminated freight allowances.
3. Reduced time for eligibility of 1% on gasoline purchases. Payment must be received on 10th day rather than postmarked on 10th day.
4. Eliminated 2% 10 days net - 30 on TBA purchases.
5. Reduction in the so-called "historic, jobber functional discount" by (1) giving the dealers a larger discount to compensate for credit card surcharges than jobbers; (2) allowed direct dealers rebates while the jobber enjoyed no rebates; (3) arbitrarily reduced dealer tankwagon price and placed the jobbers in terminal pricing with no freight allowances thereby narrowing the differential between the dealer and jobber price.
6. Deprived jobber right to expand under the major brand by refusing to allow the jobbers to market in new locations under the major brand identification.
7. Some major companies require the jobber to purchase or lease the major brand sign where new jobber locations are allowed.
8. Allowed unfair competition with commercial/industrial accounts by offering and selling this class of trade under the jobber buying price.
9. Those majors offering the discount for cash programs are advertising unfairly in jobber territories by telling the public "your dealer is being given a discount on his gasoline so you (the customer) can save money by paying cash."
10. Majors formerly offered engineering assistance to develop new jobber locations. Now this is refused plus practically all other assistances by their personnel.
11. In the major metropolitan areas (e.g. Atlanta) some majors are operating direct and competing unfairly against their jobbers and dealers by offering street prices lower than the jobber buying price.
12. Chain retailers owned by major oil companies market direct under unbranded label and offer street prices lower than jobber cost.

13. During the recent summer months of gasoline tight supply, the jobbers were placed on allocation or limited to contract volumes while the retailers were not placed in this situation.

The tactics used by most major branded suppliers of branded jobbers have caused to lower the jobbers margin, increased his expenses, and reduced his profit. For the most part, this has been done arbitrarily.

NAMES

Mr. Roger T. Lane
Executive Vice President
Georgia Oilmen's Association
3300 N. E. Expressway, Suite 8-P
Atlanta, Georgia 30341

Mr. Ed Blalock, Jr.
NOJC Director
Blalock Oil Company
Post Office Box 775
Jonesboro, Georgia 30236

Mr. Shack Wimbish, Jr.
President
Colonial Oil Industries
Post Office Box 576
Savannah, Georgia 31402

INDIANA OIL MARKETERS ASSOCIATION, INC.
8780 PURDUE ROAD
INDIANAPOLIS, INDIANA 46268
317/875-9057

STATEMENT FOR CONGRESSIONAL HEARING ON MARKETING PRACTICES

INDIANA OIL MARKETERS ASSOCIATION, INC

NOVEMBER 22, 1982

I. TYPE OF MARKET

The Indiana Oil Marketers Association, Inc., serves the State of Indiana. Our offices are located at 8780 Purdue Road, Indianapolis, Indiana 46268. Our telephone number is 317/875-9057.

The market in this state is both urban and rural. By that I mean it's an agricultural state, as well as, a lot of factories which support the automobile industry. Several cities in this state are very depressed. At this time, these cities include Muncie, Anderson, Kokomo, New Castle, etc. The Capitol City, Indianapolis, is a highly diversified city and is not suffering as much in the labor market.

The recent census here in Indiana, caused us to have to reduce the number of U.S. Congressmen from 11 to ten.

Today there are five refineries in the state and they are as follows:

1. Amoco Oil (Standard Oil of Indiana, Whiting, Indiana --- 380,000 barrels daily.
2. Laketon Asphalt Company, Laketon, Indiana --- 8,500 barrels per day.
3. Rock Island Refineries, Indianapolis, Indiana --- 43,200 barrels daily.
4. Gladieux Refinery, Fort Wayne, Indiana --- 15,500 barrels daily.
5. Indiana Farm Bureau Cooperative Association, Mount Vernon, Indiana --- 29,600 barrels daily.

II. MEMBERSHIP OF THE INDIANA OIL MARKETERS ASSOCIATION - AS OF 8/31/82 (end of fiscal year)

As of August 31, 1982, we had 288 Active members and they are divided in size as follows:

GALLONAGE DUES BRACKET	TOTAL NO.
Under 1,000,000	70
1-3,000,000	112
3-5,000,000	50
5-7,000,000	11
7-10,000,000	14
10-15,000,000	11
15-20,000,000	5
20-25,000,000	4
25,000,000 & Over	11
	288

As of August 31, 1982, our percentage of market share on gasoline in this state is 32%. There are 223 branded jobbers and 65 unbranded jobbers belonging to our Association.

On fuel oil it is a little bit harder to figure the market share, here in Indiana, because there are no figures that we can pick up from the state, because there is not tax on heating oils. Our estimate is that we do approximately 21.66% of the heating oil business when we take the total all jobberships sell and not taking the figure that is issued by the Bureau of Mines, which includes refineries.

We did have a loss in the fiscal year, which ended August 31, 1982, of 44 accounts and they were divided as follows: Six buy-outs, four consolidations, three sell-outs, and 31 cancellations---total of 44 accounts. I should point out, at the same time that we were losing these accounts, that we did sign 21 new accounts from September 1, 1981 to August 31, 1982, and if you deduct those 21 accounts from the 44 accounts that we lost it shows a net loss of 23 accounts for the fiscal year 1981-1982. Although in the 44 accounts six of them were buy-outs, and four of them were consolidations which means we didn't lose the gasoline gallonage, but neve-the-less, our net on accounts would still be 23 having been lost.

It is our belief, in this office, that we can project that within the next four or five years our Active membership list will be reduced by 50%, because of future buy-outs, sell-outs, and mergers. We will have 50% of our jobbers by number, but they will be much bigger jobbers.

III. We list below those most common problems facing our membership:

1. Subsidized Refiner - supply pricing policies.
2. Discriminatory allocation policies wherby a given refiner-supplier places a product limit on independent jobbers.
3. Reductions in the jobber's functional margin.
4. Changes in jobber credit limits.
5. Elimination of jobber freight or hauling allowances.
6. Flagrant refiner-supplier undercutting of jobber bulk end-user accounts (at cheaper prices).
7. Granting of temporary competitive allowances to refiner-direct supplied dealers, but no proportional TCA to jobbers.
8. Refiner-imposed credit card processing fees.

IV. Responding to your request we asked our membership to provide us factual information with regard to problems.they are experiencing with their suppliers. Attached, please find those responses. Please feel free to use them in testimony.

V. Robert J. Welsh, Jr., President
Donald P. Crawford, National Director
Earl C. McCaig, Executive Director

CC: Robert J. Thornhill

RE: NOJC Survey of Business Problems

Dear Sir:

I would like to respond to your letter requesting information in four areas.

Predatory Pricing: In my marketing area the two sources of unfair price competition are Refiner company operated service stations and Chain Retailers who work with guaranteed minimum margins and extended payment terms. In the first catigory is United, a brand of Rock Island Refining, who most recently led the market down with a retail price well below the otherwise low price in the market. They moved to $117.9 several days before any other marketer. Also in this catigory is Payless, a brand of Ashland Oil Company. They are frequently the price leaders. Both United and Payless are company operated and controlled by regional independant refiners.

In the second group is Bonded and Speedway, affiliates of Marathon Petroleum Company. It is my understanding that they operate with guaranteed minimum margins and, while operating somewhat independantly, do not have the normal short payment terms required of jobbers. Any analysis of their marketing operations that looks at operating costs relative to the gollons moved can most certainly see that their implied product cost is less than what jobbers pay from the same refiners. This has to be subsidized marketing in its clearest form.

Reductions in Traditional Jobber Margins: Amoco traditionally had a 3.5¢ per gallon margin for the jobber between the Dealer Tank Wagon price and the Jobber Delivered Price. Because of placing jobbers on FOB terminal pricing while still delivering their direct dealers on a delivered price basis, I find that our jobber cost is almost identical to the dealer price in [redacted] after adding common carrier freight to our FOB terminal price. We are thus unable to give our dealer in [redacted] a competitive price versus the Amoco supplied dealer. In addition, Amoco has for some time been slowly taking some of the jobber's margin by not changing the dealer and jobber prices equally on price moves.

Service Station Brand Restrictions: Amoco has verbaly told us that they feel free to compete with us in our marketing area but that we are not free to compete with them where they have company supplied service stations. As a result, we have a supply agreement, about two year old, that calls for us to brand a certain two party service station in [illegible] heart of [redacted] Amoco refuses to allow this because they do not [illegible] us to compete with them in the [redacted] market. They will tell us this verbaly but refuse to supply us a similar answer in writing. We are losing money at this account because we badly need to brand the account and are unable. Without the brand the volume is so low that we must deliver the account with a tank wagon rather than a transport. This adds to our costs. With a brand, the station could sell twenty to thirty thousand gallons per month. Without it, both we and the dealer suffer at a third that level.

Small Volume Commercial Account Direct Delivery: Amoco still insists on delivery of small volumes of lubricants via company truck out of Indianapolis. At the small price difference they charge versus our full truck load cost, they can not possibly be paying for the added overhead. For some reason, this is one of the few areas in the country that I am aware this problem still exists.

I trust that this list of specific complaints is of use to the committee.

November 8, 1982

RECEIVED
NOV 12 1982
I.O.M.A.

Mr. Jack Stough
Assistant Executive Director
Indiana Oil Marketers Association, Inc.
8780 Purdue Road
Indianapolis, Indiana 46268

Dear Mr. Stough:

In response to your NOJC Survey requested in your memo of November 5, following are my notes on the problems listed:

1. Predatory pricing: Our supplier is Conoco; we are having some problems with Speedway, 1/2 mile away; in September, they had $1.079 for regular.
2. Discriminatory allocation: No problems.
3. Elimination of 1%-10 days discount: Conoco still gives 1%-10 days.
4. Reductions in traditional jobber margins: Possibly, but not by Conoco.
5. Changes in jobber credit limits: Conoco still OK.
6. Elimination of jobber hauling allowance: Conoco eliminated over one year ago.
7. Supplier taking over large accounts, etc: Not our supplier.
8. Suppliers granting Temporary Competitive Allowances: To Marathon Dealers.
9. Refiner imposed credit card processing fees: Conoco imposted 2.5% on June 15, 1982.
10. Etc: Possible pull out by our supplier; fewer suppliers in certain areas could create a monopoly.

November 8, 1982

Indiana Oil Marketers Association
8780 Purdue Road
Indianapolis, Indiana 46268

Attention: Jack Stough, Assistant Executive Director

Gentlemen:

Relative to the November 15 survey request received by us today, we wish to advise that the ten items to which we were to reply really do not effect us since we are branded Marathon.

We have not enjoyed a cash discount since May 1, 1973, which was also the date that our hauling allowance was discontinued. We do not feel Marathon is granting any TCA's to any of their own dealers and by-passing us as a jobber. The only negative comment we might make is that competition is quite evident in the many markets of the Checker, Speedway and Bonded Oil Companies. In those areas where we are competing against Marathon sub's there are problems for us as well as others.

We hope that what little we can give to you will help the NOJC in their Congressional hearings.

RECEIVED
NOV 10 1982
I.O.M.A.

Earl/Jack

In response to the attached letter we offer the following:

1.) Refiner rent refunds to owner-operators:

Please see the copy of leasing proposal to a local Sunoco dealer. With the spread between Dealer + Jobber tank wagon we cannot meet the refiners deal. We cannot prove but we are aware of 2 deals in South Bend where Marathon put in new pumps and tanks for an owner/operator and are giving 2.0¢ rent refunds

2.) Grand Opening Specials

Marathon has held 3 day grand openings at several locations where the retailer undersells the market by 8-10¢ per gallon. No written proof is available but we understand the retailer is given $200.00 to cover expenses. Retailers involved have been in business for more years [illegible]"

SUN 417-A

Date: July 27, 1982
Duns No: 0009-4630
Division: St. Louis,

DEALER SUPPLY FRANCHISE

PART A

COVER PROVISIONS

THIS DEALER SUPPLY FRANCHISE, hereinafter referred to as "Franchise", is made and executed by the herein named Company and Dealer for purposes of stating the terms and conditions by which Company will make available for sale, Company's branded motor fuels to Dealer, and Dealer will operate Dealer's business, including the resale of Company's branded motor fuels to the public, at the Premises described below. This Franchise constitutes a "franchise" as that term is used in and defined by Title I of the Federal Petroleum Marketing Practices Act, 15 U.S.C. §2801, *et seq.*, hereinafter referred to as "the Act".

COMPANY: SUN REFINING AND MARKETING COMPANY

COMPANY'S ADDRESS: 3006 N. Raceway Drive, Indianapolis, IN 46234

DEALER: [redacted]

PREMISES' ADDRESS: [redacted]

TERM:
The term of this Franchise shall commence on the ____________ (____) day of ____________, 19___, and shall continue in effect for a term of Five (5) year(s), unless sooner terminated.

COMPANY'S EQUIPMENT:
For use by Dealer in promoting and selling Company's branded motor fuels, Company loans to Dealer, for the term of this Franchise, the following Equipment which is or will be installed on said Premises by Company:

5 – Blend Pumps
3 – Single Product Pumps
1 – 16' Sign and Sign Pole

MINIMUM QUANTITIES:
Dealer shall purchase and resell to the motoring public during the term of this Franchise, not less than the following quantities of Company's branded motor fuels:

Two Hundred Fifty Two Thousand Gallons (252,000 gallons) annually for the term of this Franchise.

DEALER SUPPLY FRANCHISE

PART B

SPECIAL PROVISIONS

ompany agrees to give Dealer one and three-quarter cents (1.75¢) per gallon on-
ny and all gasoline delivered by Company to the Premises during each quarterly
eriod of the term of this Franchise. Delivery records of Company shall be taken as
onclusive for computing the amount of consideration. Said sum will be given by
ompany within thirty (30) days of each quarterly anniversary date of this Franchise.

ompany shall have the option, withou t having further liability to Dealer, to discontinue
e consideration for any reason and at any time upon giving Dealer written notice of such
iscontinuance. In such event, Dealer shall have the option to immediately terminate
e Franchise upon written notice to Company.

PERSONAL SUPERVISION:
This Franchise is made on the condition and understanding that [redacted] will personally ope
and manage the daily operations of Dealer's business. Prior written consent of Company is required in the event the above n
individual desires to cease personal management of Dealer's business. Said consent of Company shall not be unreasonably with

COLLATERAL DEPOSIT:
Terms and conditions governing collateral deposits listed below are set forth in Part D Collateral Deposit Provisions.

Federal Identification or Social Security No.: [redacted]
State Code No.: 13 - Indianapolis

Cash Portion of Deposit Only: Ten Thousand and no/100———— Dollars ($10,000.00)
June 30, 19 82.

Plus an additional amount to be accumulated from time to time at the rate of NONE (____) cents per
on all deliveries of motor fuel until a total of ____ D
($____) has been accumulated.

Other agreed arrangements for accumulation of cash deposit:

Collateral Other Than Cash:

CREDIT CARD IMPRINTER:
Dealer acknowledges receipt of One (1) Credit Card Imprinter and Mount Box unit
agrees to pay Company in advance a rental at an annual rate of Forty——
($ 40.00) per unit, effective the first day of the month following installation and extending to the nex
30th. Subsequent annual rental charges will date from July 1st for each succeeding year. Installation and maintenance c
said units shall be paid by Company.

Dealer agrees not to remove said unit(s) from the Premises where installed, and to pay Company One HundredThirty
Dollars ($ 132.00) per unit in the event said unit(s) are lost or destroyed. Dealer agrees to return said
to Company upon request and hereby gives Company the right to remove the same at any time without notice and, in either
Company shall refund any unearned prepaid rental.

Company reserves the right at all times to change the foregoing rental upon giving Dealer thirty (30) days' prior written

PARTS OF DEALER SUPPLY FRANCHISE:

Part A Cover Provisions
Part B Special Provisions
Part C General Provisions
Part D Collateral Deposit Provisions
Part E Credit Card Acceptance Provisions
Part F Maintenance Provisions
Part G Daily Recordkeeping and Inventory Contro

The Provisions above constitute Parts of this Franchise, and are incorporated therein and made a part thereof for all pu

NOTE TO DEALER: This is a binding legal document containing several Parts. You should carefully read each Part before signing in the space provided below.

EXECUTED THE ____ (____) DAY OF ____, 19__

WITNESSES:

DEALER:

[redacted]

COMPANY:

BY: ____

Title: Division Sales Manager

November 15, 1982

The problems listed below are all with my supplier Texaco.

(1) Texaco is giving all the gasoline its direct supplied stations can sell while holding jobbers to contract limits.

(2) September 1, 1982, Texaco raised the price of lead free and Premium 2/10¢ thereby cutting jobbers margin 2/10¢ on these products.

(3) Texaco decreased dealer price 1¢, while decreasing jobbers price only 1/2¢ on two different occasions, July 22, 1982, and October 9, 1982.

(4) Texaco eliminated hauling allowance of .01137 to me on April 1, 1982.

(5) Texaco has and is continuing to rebate direct dealers .045 (41/2¢) to purchases over 50% of allocations while not rebating jobbers anything.

(6) Texaco started to impose a 3% processing fee on credit cards November 1, 1981, this practice has continued to date.

INTERMOUNTAIN
Oil Marketers Association

1800 MILL SQUARE □ 1800 South West Temple □ Suite 300
Salt Lake City, Utah 84115 □ (801) 484-8719

November 19, 1982

RE: REPRESENTATIVE BERKLEY BEDELL & HEARINGS ON SUPPLIER RELATIONS
UTAH CHAPTER OF INTERMOUNTAIN OIL MARKETERS ASSOCIATION

The Utah Chapter of IOMA represents approximately 225 gasoline and diesel fuel distributors within Utah. These marketers sell petroleum products at both wholesale and self-service retail. Their sales represent an estimated 75% of all the petroleum products sold in the State. Members range in size from small rural family businesses to large multi-location self-service businesses.

Utah obtains its supply of petroleum products primarily from five refineries within the State. They are operated by Amoco, Chevron, Husky, Phillips and Plateau. There are also three small refineries operated by independents. Very little refined product is imported into the State.

Market conditions in Utah are much the same as the rest of the Intermountain States. Self-service gasoline sales by a percentage of 83% is the highest of all the states in the country. This is an indication of the competitive nature of the petroleum marketing business in the State.

There is only one major oil company, Amoco, that does any significant direct marketing in the State. They do so through their Rainbo brand. Amoco has just last month notified all Amoco branded jobbers in the State they intend to change all branded Amoco jobbers to unbranded ones. This would eliminate any Amoco trade mark within the State.

The other major oil companies, namely, Chevron, Conoco, Husky, Phillips, and Texaco now charge their jobbers and retailers a discount for credit cards. The jobbers and retailers have changed their marketing response to a discount-for-cash program.

The overall conditions in the market place are best described by low margins and competitive price wars. Utah has had three bankruptcies of large marketers within the past few months. There have been several buyouts of marketers and many others are looking for buyers in hopes of salvaging what value there is left in their business.

Many marketers have looked to the Utah Motor Fuel Marketing Act which essentially prohibits below cost sales. The Attorney General in the State has just written some guidelines for enforcement of this law. The dealer organization plans to introduce legislation in the 1983 legislature in order to prevent below cost sales and preserve the independent segment of the industry.

It has been predicted that unless market conditions change soon, as many as 50% of the marketers will be out of business.

The future is impossible to predict but it is easy to see that the present condition in the petroleum marketing is unhealthy with low or even negative profits. Many will not survive unless some changes are made.

Respectfully,

Gerald Tedrow

Gerald W. Tedrow
Executive Director

GWT:pw

cc: Boyd Cobbley, President
c/o Central Distributing Co
Spanish Fork, Utah

Sterling Jardine
NOJC Director
Jardine Petroleum Co
Logan, Utah

IOWA INDEPENDENT OIL JOBBERS ASSOCIATION, INC.

BOX 6156 • PHONE 244-6273 • DES MOINES, IOWA 50309

NORBERT BAHL, PRESIDENT
LARRY WATSON, VICE-PRESIDENT
DONALD RICHARD, TREASURER
E. A. KISTENMACHER, MANAGING DIRECTOR

Mr. Phil Chisholm
National Oil Jobbers Council
1707 H Street NW
Washington, D. C. 20006

Dear Phil:

The Iowa petroleum marketplace is rural. Only four Iowa metropolitan cities exceed 100,000 in population. The countryside has numerous small cities. The entire State of Iowa has an abundance of very competitive gasoline retailers.

Iowa's marketplace has little appeal to the major oil company for real estate investments. In recent years, most of Iowa's major oil marketing investments have been sold to distributors or local investors. Only two major oil companies maintain sizable ownership or control the leases of service station properties in Iowa -- Getty and Standard of Indiana. Standard has 200 company dealer direct Iowa service stations and Getty operating under the Skelly logo has 70 owned service stations. Of Skelly's station investments, 20 are closed and available for sale, 22 are lessee dealer operated and 28 are converted to company operated Surfco stations with a price competitive image. We estimate that all other major oil companies combined own less than 35 service stations in Iowa. The Iowa petroleum marketplace is dominated by distributors, small refiners, large regional independent marketers and farm cooperatives.

Our Association has 707 members of various brands and operating styles. The most prevalent major brands displayed by some of our members are Amoco, Conoco, Mobil, Phillips, Skelly, Sun (DX) and Champlin. Prominent independent refiner brands are Total (Apco), Derby, Kerr McGee and Sinclair. Most Iowa petroleum distributors serve their own small communities and the surrounding rural consumers. They have smaller petroleum volumes -- 450 members sell less than one million gallons of gasolines and distillates a year. This type of marketer operating out of his wife's kitchen, where orders and messages are received, can be competitive because of the plentiful unbranded price competitive wholesalers available. The eight pipeline terminals of Williams Brothers Pipeline Company easily reach most Iowa markets. This common carrier pipeline provides unbranded petroleum wholesalers the opportunity to trade, buy and sell many price competitive gallons to Iowa petroleum marketers. The major oil refiners recognize this wholesale competition and attempt to remain price competitive to their own branded distributors. The end result is active price competition at the retail level.

The Association has lost members in recent months. The reasons are mainly due to lack of adequate profits, stagnate and/or loss of demand and the high cost of borrowed money. Some of these departed members have consolidated with a nearby competing distributor.

The current gasoline marketplace problems in Iowa relate to Amoco's aggressive discount for cash marketing. This may be a short term problem. The severe depressed retail gasoline prices appear in markets where the local Amoco lessee/dealer follows a policy of pricing his cash only gasolines even with the unbranded private, or small refiner branded competitor station's prices. The differences in pump price postings relates directly to the combative nature of the Amoco lessee/dealer and his competitive station operators. Some isolated situations have seen retail gasoline postings go below dealer and distributor costs.

The biggest problem Iowa's retail gasoline marketplace has relates to competitors who serve several stations, and decide to aggressively pursue a gasoline pricing policy in a single community where competitors only have one retail gasoline outlet. Economics favor the marketer who has retail outlets in several locations. This problem is long range and has yet to see a remedy in Iowa. The Iowa courts have never convicted a gasoline retailer of intentionally planning to injure a competitor. The legal word "intent" is difficult to overcome, and economic injury to small single service station marketers is a sad everyday fact in our state.

More information about the Iowa gasoline marketplace can be obtained from our President, Norb Bahl, a DX distributor in Jesup, Iowa -- our NOJC Director, Ron McGauvran, a Phillips distributor in Clinton, Iowa -- or myself, the salaried staff executive for the past 19 years of this Association.

Sincerely,

E. A. Kistenmacher
Managing Director

K:c

KOMA
KANSAS OIL MARKETERS ASSOCIATION
Suite 804 Merchants National Bank • Topeka, Kansas 66612 • Phone (913) 233-9655
MEMBER OF NATIONAL OIL JOBBERS COUNCIL

NARRATIVE ON SUPPLIER PRACTICES

Prepared by the Kansas Oil Marketers Association for the National Oil Jobbers Council.

TYPE OF MARKET

A small percentage of the Kansas petroleum market is urban, consisting of the metropolitan areas of Wichita, Topeka and Kansas City, Kansas.

Many jobber accounts are rural/farm accounts.

Majority of product marketed in Kansas supplied by the following companies:

- Conoco
- Amoco
- Derby
- Kerr-McGee
- Koch
- Phillips
- American Petrofina
- Farmland Industries
- Mobil
- Getty
- Total
- Champlin
- Pester

MEMBERSHIP OF KANSAS

1982 membership: 285

Size: 9 member firms sell 7,000,000 gallons or more
98 member firms sell between 700,000 and 7,000,000 gallons
remainder sell less than 700,000 gallons annually

Market share: KOMA members account for approximately 22% of product sold in state

Loss of Membership: Approximately 8% loss for 1982
Projected loss for 1983 - 15%

Products marketed: Motor fuels (very little home heating oil)

PROBLEMS FACING MEMBERSHIP OR MARKET SITUATION

A major problem voiced by KOMA members is that of being in direct competition with supplier who is direct marketing in same town.

* * *

When supplier initiated the cash discount program, they gave the jobber a cut of .8¢ and the dealer a cut of 2.7¢.

* * *

Suppliers added on a 5¢ per gallon surcharge for diesel for the month of November because jobber overpulled for October.

* * *

Supplier trying to take commercial accounts away from jobber by selling 3¢ to 4¢ below jobber price to these accounts. This practice reported by a number of Kansas jobbers in various regions.

* * *

Supplier is marketing on street at jobber's cost.

* * *

Supplier charging credit card surcharge of 3%.

* * *

NAMES

Charles H. Nicolay, Executive Director
Jerry Shanks, President
Robert Edgar, NOJC Director

Louisiana Oil Marketers Association

AREA 318 221-4113 • P. O. BOX 1 • Shreveport, Louisiana 71161

November 15, 1982

STATEMENT BY LOUISIANA OIL MARKETERS ASSOCIATION

This statement is made in behalf of the members of the Louisiana Oil Marketers Association, a trade association composed of some 375 wholesale distributors (jobbers) of gasoline, diesel and other petroleum products, with bulk plants and terminals located in each of the 64 parishes (counties) in Louisiana.

Because it is a major oil producing state, Louisiana has spawned a large number of refineries, ranging in capacities from 1,800 to 500,000 barrels of oil per day, the prinicpal plants being operated by: Cities Service, Conoco, Exxon, Marathon, Murphy, Pennzoil, Shell, Tenneco and Texaco. Additional supplies come from refineries in neighboring Arkansas and East Texas.

The market includes six urban areas with an estimated 40% of state sales volumes, and the balance small city, town and rural market (farm). In this area independent wholesale distributors market 50% of the gasoline and 90% of the diesel fuel. And 95% of these independent businesses are supplied by integrated major oil company producer-refiners and market under brand names such as Exxon, Citgo, Phillips, etc. They employ an average of five persons.

Their sales volumes range from small, rural plants employing two persons and handling as little as 55,000 gallons of product per month to metropolitan and marine plants selling 10,000,000 gallons per month, employing 60 to 80 persons. Historically, in the distribution chain, jobbers serve an important function in every community.

Sales are: 1) to industrial and commercial accounts, 2) to independent retailers, and 3) through jobber-owned retail outlets.

The problems raised by diminishing consumption by the motoring public and by a world excess of oil, are today exacerbated by the very supplying major integrated oil companies whom jobbers, until current times, have considered their partners in the marketing chain.

In today's market we find major companies and large integrated independents set on a course of actively subsidizing their direct, company-owned retail outlets with prices below the wholesale levels which are granted their own branded jobbers.

One Louisiana (Gulf) jobber's complaint is typical: "They are selling their direct dealers gasoline at the same price, and at times cheaper, than their jobbers. At the same time they are rebating 2.8¢ per gallon to their direct dealer on the credit card charges of 3%, and rebating only .8¢ per gallon to their jobbers."

Another example typical of predatory pricing by a major company in competition with its own branded (Amoco) jobber: "My company undersold me by 2c per gallon on a large commercial account which I had been serving for years at a very small margin of profit." In this case the major company already had the business through the jobber, but chose to under-cut its own branded representative -- an unfair trade practice.

-more-

Within the past two months two Louisiana jobbers have taken bankruptcy, and three have simply closed down. Several others are operating on a no-profit basis, praying for future survival. Within the past two years, 27 Louisiana jobbers have lost identity by forced mergers and sell-outs. A record number have run "For Sale" ads. Many Louisiana jobbers are in mid-ocean on a leaking life raft.

A Phillips jobber notes that his gross margin over cost was 3¢ per gallon in 1957 when his buying price was 11¢ per gallon before excise taxes. In November, 1982 his buying price is 94¢ before taxes and his gross margin is less than 3¢ per gallon.

Other actions taken recently to further squeeze the jobber's existence are: 1) the elimination of freight (hauling) allowances, 2) capricious changes in credit terms by companies selling to jobbers and, 3) the initiation of credit card surcharges on both jobber and dealer.

Through all this runs the thread of growing rapacious pricing practices by the large companies, made possible by subsidization from upstream profits in production and refining.

Traditionally independent jobbers have been the principal defenders of the free market system...were strong supporters of petroleum decontrol scarcely a year ago.

Within 12 months time this position has been reversed by the ruthless marketing practices of the integrated companies -- practices which now threaten the existence of the small jobber and the jobs of the thousands of workers he employs.

Small business distributors who are customers of the oil companies are being forced by big business to appeal to government for solutions which will comehow enable them to survive.

This statement is made on behalf of the jobber-members of the Louisiana Oil Marketers Association.

Hardeman Cordell
Hardeman Cordell
Board Representative
National Oil Jobbers Council

J Rucker Leake
J. Rucker Leake, Jr.
President

Robert K. Butcher
Robert K. Butcher
Executive Director

MAINE GASOLINE MARKET

By: Wilfred H. Hall
Independent Oilmen's
Association of NE
10 Vaughan Mall
Portsmouth, NH 03801

Size and Makeup of Market

Currently, Maine citizens buy 517 million gallons of gasoline annually.

Unlike several surrounding states, Maine has not published detailed gasoline statistics sincce April of 1978. However, one can track changes in surrounding states to approximate conditions of Maine.

Back in 1978, there were 10 major oil companies, 49 independent distributors who were Maine corporations, and 5 independent corporations outside Maine operating in the state. With Amoco and Shell vacating Maine soon, there will be 8 major refiners and it is likely there are about 40 Maine independents and 20 independents from outside Maine who operate in that market.

Back in 1978, major refiners held a 46½% share of market. If Maine parallels documented experience in nearby New Hampshire, major refineres now would account for about 33% of sales through their own outlets. Thus, independent distributors are the preponderant factor. However, major oil company direct operated outlets tend to be the price setters in the metropolitan markets where most of them are located.

Four large independents play a key role in petroleum distribution in Maine; Webber Oil Co., D. W. Small, Dead River Oil Co. and C. N. Brown. These four are critical for the state since their supply terminals hold significant storage important for customer security.

Due to the rural nature of the state, independents are often the only distribution available to many markets.

There is a high probability that more major refiners will leave the state, which will further increase marketing by independents.

Retail Outlets

The number of retail gasoline outlets in Maine has diminished as follows:

1975	1,262
1978	871
1979	838
1980	804 (See Exhibit #1)

This has come about because of the following factors:

1. Reduction in gasoline demand (smaller lighter cars).
2. Changing consumer buyer habits to use:
    a. Self service
    b. C-store gasoline combinations
3. Inflation increasing station costs.
4. Higher gasoline costs requiring more capital to operate a station.
5. Less consumer need for services offered by older bay stations.
6. Pressure from major oil company direct marketing stations which lowered operating margins at retail.

Supply

Maine obtains gasoline supply mainly from Portland, Searsport and Bucksport terminals. As stated earlier, much of this is in the hands of independents. Some product is trucked up from Chelsea-Boston, Mass. for the extreme southern tier of the state.

Margins

Where majors refiners operate directly, they are using various devices to squeeze jobber margin including:

- Making them bear the costs of refiner credit cards (which by law cannot be passed on to customers).
- Utilizing the Alaskan windfall tax exclusion to lower retail prices at their own stations beneath any reasonable positioning a jobber might make.
- Shortening lines of credit to jobbers.
- Eliminating hauling allowances.

Arco's savings by not offering credit cards is likely in the 3¢ to 4¢ a gallon area (what other major refiners are charging for credit card services) yet their postings are often as much as below the market. This differential is thought to principally stem from the fact Arco's Alaskan crude is exempt by law from the windfall profits tax. In any case, Arco's pricing has been a significant factor in the deteriation of gasoline margins in Maine.

Exhibit #1

GASOLINE CONSUMPTION

(000 gals)

STATE	1980	1975	1970
ME	517,014	536,051	471,242
NH	411,214	403,324	348,120
VT	238,842	240,272	214,810
MASS	2,301,675	2,313,488	2,085,513
RI	381,826	388,108	346,075
Totals	112,628,554		

# SERVICE STATIONS

# of Units

	1980	1979	1978	1975
ME	804	838	871	1,262
NH	606	632	657	888
VT	464	484	503	616
MASS	3,341	3,484	3,622	4,306
RI	559	625	650	816
Total US	146,523		216,509	

Source, NPN Fact Books

Exhibit #2

MAINE GASOLINE SALES

gallonage in "000"
Month of April, 1978

Amoco	194	
Arco	3	
Chevron	2,122	
Cities Service	1,866	
Exxon	3,666	
Getty	1,373	
Gulf	4,622	
Mobil	3,629	
Shell	1,195	
Texaco	1,489	
Subtotal	20,159	46.5%
Total Sold	43,293	53.5%
% Major	46½%	
% Independent		
# Majors	10	
Non Majors	54	
Non Majors outside Maine	5	

Source: State Tax Records

MASSACHUSETTS GASOLINE MARKET

By: Wilfred H. Hall
Independent Oilmen's
Association of NE
10 Vaughan Mall
Portsmouth, NH 03801

Size and Makeup of Market

Massachusetts motorists consume 2,301 million gallons of gasoline annually. This is 2% of the US market. (See exhibit #1)

Major refining companies are increasing their share of the market and now control 65.3% of the distribution through directly owned outlets. This is a 7% increase since 1979. The increased market share occurs because of acquisitions and marketing practices against which independent marketers have little defense.

There are 50 major refiners operating in the Bay state, 82 licensed distributors, which are located in the state, and 18 other independents headquartered in other states. (See exhibit #2)

Retail Outlets

The number of retail gasoline outlets in Massachusetts has diminished as follows:

1975	4,306	
1978	3,622	
1979	3,484	
1980	3,341	(See Exhibit #1)

This has come about because of the following factors:

1. Reduction in gasoline demand (smaller, lighter cars).
2. Changing consumer buyer habits to use:
    a. Self service
    b. C-store gasoline combinations
3. Inflation increasing station costs.
4. Higher gasoline costs requiring more capital to operate a station.
5. Less consumer need for services offered by older bay stations.
6. Pressure from major oil company direct marketing stations which lowered operating margins at retail.

Further attrition in number of operating units at retail is expected.

Margins

Major refiners appear to be using their upstream profits to subsidize their direct marketing operations at service station level and thereby leading margins of jobbers to historical low levels as a % of sales.

Majors have used various devices to squeeze independents including:

- Making them bear the costs of refiner credit cards (which by law cannot be passed on to customers).
- Utilizing the Alaskan windfall tax exclusion to lower retail prices at their own stations beneath any reasonable positioning a jobber might make.
- Shortening lines of credit to jobbers.
- Eliminating hauling allowances.

Arco is a case in point. Arco has jumped its market share from 6.0% of the total market in August of 1981 to 10.4% of the market in 1982 and doubled its gallonage sales.

Arco's savings by not offering credit cards is likely in the 3¢ to 4¢ a gallon area (what other major refiners are charging for credit card services) yet their postings are often as much as below the market. This differential is thought to principally stem from the fact Arco's Alaskan crude is exempt by law from the windfall profits tax. In any case, Arco's pricing has been a significant factor in the deteriation of gasoline margins in Massachusetts. (Arco margins from 6% to 10.4%.)

Supply

Massachusetts gasoline stems mostly from the Chelsea-Boston area and a pipeline to DRACUT and one to Holyoke. Some product comes from Rhode Island to serve southeastern markets and some from Albany, NY, to serve western towns and cities.

An established 25% of the market is private branded.

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Exhibit #2

MASSACHUSETTS GASOLINE SALES

August months each year

(in 000 of gallons)

	1979	1980	1981	1982
Amoco	5,291	4,939	4,750	4,548
Arco	12,240	10,083	11,726	20,126
BP	43	32	8,880*	8,116
Chevron	2,755	2,833	1,286	1,336
Cities	7,378	6,723	6,472	5,048
Exxon	19,921	13,088	11,852	10,964
Getty	7,391	7,377	6,497	5,459
Gulf	13,979	10,017	10,206	9,751
Mobil	31,374	30,303	24,235	23,207
Phillips	131	401	-	-
Shell	14,067	15,110	12,499	11,105
Sun	13,086	12,797	11,630	13,815
Texaco	7,455	6,399	6,324	6,270
Agway	466	443	375	610
Amerada Hess	6,379	5,829	7,270	5,416
Subtotals	114,384	126,374	123,952	125,771
Total month	195,510	212,518	193,131	192,677
% Sold by Majors	58½%	59.4%	64.1%	65.3%
% Sold by Others				

*BP purchased Gibbs oil from independent.

Arco Share Market	6.2%	4.7%	6.0%	10.4%

# Independents	109
# Independents from other states	18
# Majors	15

Source: State Tax Records

michigan petroleum association

AFFILIATED WITH THE NATIONAL OIL JOBBERS COUNCIL

1200 Michigan National Tower, Lansing, Michigan 48933 — Telephone (517) 487-9139

November 10, 1982

TO: National Oil Jobbers Council

SUBJECT: Statement for Congressional Hearing on Marketing Problems

FROM: Michigan Petroleum Association
David Murton, President
Raymond Rengo, NOJC Director
Thomas Cordell, Executive Director

Type of Market

The Michigan gasoline market is actually a mixture of markets comprised of:

1. A large urban-suburban area as represented by the Detroit-Southeastern Michigan region.
2. Medium sized industrial cities, urban-suburban in nature.
3. Rural and resort areas.

Principal Refiners who supply Michigan

Amoco
Apex (Clark)
Ashland
Citgo
Gulf
Koch
Marathon
Mobil
Phillips
Shell
Sun
Total
Union
Boron (Sohio)
Conoco
Arco

Membership of Michigan Petroleum Association

The majority of our members sell both fuel oil and gasoline. The fuel oil portion is generally in home heating oils, farm, industrial and commercial accounts. Most of the gasoline marketed by our jobbers is through company operated self-serve retail outlets (including convenience stores) with some product moving through dealers and independently owned outlets. We estimate Michigan jobbers sell approximately 25% of the 3.86 billion gallons of gasoline sold annually in Michigan, and approximately 37% of the 772 million gallons of middle distillates. The average sized Michigan jobber does approximately 3 to 5 million gallons per year. The Michigan Petroleum Association has 360 members which is a drop of approximately 5% from the previous year.

Marketing Problems

The number one marketing problem in most Michigan areas is low street prices which results in independent marketers being driven out of business no matter how efficient they are. If they meet the low prices, which are usually at or below their cost, they lose money. If they sell at a break-even or above price, they're too high and nobody buys from them. So either way it's only a matter of time before they're out of business. There are a number of factors, both lawful and unlawful, that contribute to the present "low street price" plight in Michigan. Following are some examples:

Alcohol Fuels Both Federal and State (Michigan) have reduced motor fuel taxes on "gasohol" or alcohol fuel mixes resulting in a subsidy enabling blenders to market their product at approximately 2-cents-per-gallon less than regular gasoline. Since many major brand refiners prohibit their jobbers and dealers from mixing or selling alcohol fuels, these marketers must lose 2-cents-per-gallon margin on their regular gasoline in order to compete. Unfortunately there are some blenders who are cheating by using less alcohol and claiming a full tax break, thereby putting a product on the street at an even lower and unfair price. This practice is non-enforcable under present laws.

Tax Evasion A number of marketers in the Detroit area are evading taxes in one or more ways. Some are just not paying all or a part of their Federal 4-cents-per-gallon motor fuel tax or Michigan's 4% state sales tax. Some are smuggling gasoline into Michigan from Ohio where there is no state sales tax on gasoline. Neither Federal or State agencies have the manpower to police these offences.

Credit Card Surcharges At the time Amoco and Mobil imposed their credit card processing charges upon dealers and jobbers, most Michigan jobbers were already selling gasoline at the prevailing low "street prices," consequently there was no way for them to offer an additional discount for cash without going down to or below cost. The net result of their suppliers' program was to increase the jobbers cost of doing business by the amount of the credit card processing charge. In the case of small to medium sized jobbers this translates into $2,000 to $5,000 per month of added costs, the difference between profit and loss for the business. Credit card surcharge plans are great for the refiners, but a real burden upon independent marketers.

Unfair Competition Independent marketers have no quarrel with good clean competition, whether it is among themselves or with their major refiner suppliers. However, the following conditions which exist primarily in the Detroit Metro Market are intolerable. The marketers who evade taxes, the blenders who cheat by using an illegal mixture of alcohol fuels, the gaoline smugglers, and combinations of "all of the above" are able to induce fictitiously low street prices for gasoline. These phony "street prices" are immediately met, and sometimes undercut by legitimate, aggressive refiner-marketers who are not about to let some fly-by-nighter steal any business from them. They also have the financial ability to sell indefinitely at a price at or below cost, whereas the independent marketer does not have the financial capability to meet this kind of competition. As we already said, if he lowers his price to meet the prevailing low street price, he loses money on every gallon he sells, and if he maintains a price at or above cost he doesn't sell any gasoline. Either way it's only a matter of time until the honest independent marketer is put out of business.

Often the independent marketers own refiner-supplier will arbitrarily reduce their street price at their own company operated stations or for their direct dealers, but make no comparable reduction in their wholesale price to their independent marketer customers. This action, too, is devastating to the independent marketer. Regardless of how efficient he may be, he cannot meet nor survive this kind of unfair competition.

Respectfully Submitted,

Thomas Cordell

Thomas G. Cordell
Executive Director

michigan petroleum association

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Respectfully Submitted,

Thomas Cordell

Thomas G. Cordell
Executive Director

MID-ATLANTIC PETROLEUM DISTRIBUTORS' ASSOCIATION
Maryland, Washington D.C., Northern Virginia

Robert Irvin/Executive Vice President

November 9, 1982

TO: NOJC

FROM: F. Peter Horrigan, President

SUBJECT: Petroleum Marketing Problems Facing the Independent Distributor

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MAPDA PROFILE

The Mid-Atlantic Petroleum Jobbers Association (MAPDA) represents more than 85% of the independent gasoline and heating oil marketers operating in Maryland, the District of Columbia, and adjacent counties of northern Virginia. Collectively their sales account for approximately 22% of the gasoline and 75% of the heating oil distributed in this geographic area.

Our membership's median annual volume is 6,000,000 gallons (total), frequently equally divided between motor fuels and home heating fuel. He/She owns a bulk plant and employs 20 people. Increased operating costs, coupled with reduced margins and product demand have severely impacted this small businessman.

THE MARKETPLACE

Gasoline distribution in the described geographic area is dominated by 17 major refiners who individually establish and implement policies that affect the entire industry. There is little, if any, jobber recourse. How to survive is the only issue! The problems are as follows:

1. PROBLEM - Supply - Service station dealers at refiner delivered outlets may purchase all the gasoline they can sell, while distributors are restricted to allocations based on percentages of prior period sales.

   RESULT - Refiner dealers can experience growth in sales and profit. Jobber dealers volumes are capped and business incentives stymied.

2. PROBLEM - Pricing - Terminal pricing programs implemented by many refiners equalize the buying price available to distributors and retailers. The historic differential based on the wholesale function is eliminated.

   RESULT - The jobber is at an immediate price disadvantage in that he/she must pay a hauling cost while the refiner delivers to his network of dealers at no charge.

3. PROBLEM - Pricing rebates - Some majors offer reductions in buying prices in certain zones (as determined by their policy). Equal reductions are not offered to jobbers.

   RESULT - Cost inequities deny the jobber the ability to compete.

4. PROBLEM - Loss of Commercial Business - Incidents are reported of major companies delivering to historic jobber end user customers at prices equal to or less than those offered to the area jobber.

   RESULT - Loss of profit; loss of volume calculated in determining allocation.

5. PROBLEM - Contract Cancellation - Majors require a committment on a number of gallons to be purchased by a jobber over a given time frame. The problem occurs when the seller's price is considerably higher than a competitors' price for gasoline of equal specification. To maintain his contract, the buyer must buy the higher priced product.

   RESULT - A catch 22. If the jobber pays the high price, he cannot re-sell his product. His inventory sets; he is unable to fulfill his contract requirement; his contract is quite legally cancelled. This jobber is out of business unless he can locate another supplier.

6. PROBLEM - Reduction in Credit Terms - In varying degrees, suppliers have reduced the time for payment of product.

   RESULT - Cash flow is negatively impacted.

CONCLUSION

The Jobber segment of the oil industry is not fully integrated (as are the Majors) with ownership of crude, and refinery capacity. They (jobbers) cannot set policy; they can only react. Unless solutions are soon found to aforementioned problems, the demise of many is predictable.

PRESIDENT
John B. Walker, Jr., Jackson

VICE PRESIDENT
J.H. Lipscomb III, Greenville

VICE PRESIDENT
Edwin B. Loudon, Leland

MEMBER OF

SECRETARY-TREASURER
W.D. Saxon, Jackson

NOJC DIRECTOR
W.W. Gresham, Jr., Indianola

EXECUTIVE DIRECTOR
Donna Murphy

MISSISSIPPI PETROLEUM MARKETERS ASSOCIATION
455 N. LAMAR STREET / P. O. BOX 287 / JACKSON, MISSISSIPPI 39205
(601) 353-1824

ASSESSMENT OF PETROLEUM MARKETING CONDITIONS IN MISSISSIPPI

TYPE OF MARKET

Mississippi's petroleum marketing area consists primarily of rural markets served by branded and nonbranded wholesalers who supply their own and independent retail outlets.

The state's "metropolitan" markets consists only of Jackson (population 250,000) and the Gulf Coast area (population 100,000).

Gallonage figures for the second quarter of 1982 reveal that some 64 percent of the market is shared by major refiners, while 36 percent is shared by regional and local independent refiners.

MEMBERSHIP OF STATE ASSOCIATION

The Mississippi Petroleum Marketers Association consists of 225 branded and nonbranded wholesalers of petroleum products.

The membership accounts for approximately 50 percent of the petroleum products sold within the state, with annual sales of some 800 million gallons of gasoline, diesel fuel, aviation fuel, motor oils, and other petroleum related products.

The average member employs 8 full time employees, exclusive of employees in retail outlets; he owns and operates an average of 6 retail outlets and supplies an average of 25 other major retail accounts. The membership currently supplies some 1,350 retail outlets in the state.

The association has experienced a net gain in wholesale members within the past three years, with additional membership increases expected. These gains, however, have been the result of an aggressive membership development campaign and do not reflect economic conditions of the marketers' business interests.

The association's goal is to represent a membership accounting for 75 percent of the petroleum products marketed in the state.

THE STATE'S MARKETING CONDITIONS

Mississippi petroleum marketers have been affected by changes implemented by supplying companies, but not to the extent of marketers in larger, metropolitan states.

The Mississippi Petroleum Marketers Association maintains that the current changes in supplier marketing systems would probably have occurred in the 1970's had federal control not restricted the industry.

While the Mississippi marketers are concerned about the swift implementation of these changes since the advent of decontrol, their major challenges in the marketplace continue to be competition with regional independent chain retailers and with other aggressive Mississippi marketers.

These marketing conditions, ultimately in the best interest of the consumer, are the result of the free marketplace allowing local interactions and marketing strategies.

Therefore, an overwhelming majority of the Mississippi marketers prefer a competitive market over new interventions or controls by the central national government. The Mississippi marketer would rather rely on his competitive instincts and abilities in dealing with local competition than have legislative controls continue to pervert the petroleum marketing system.

Further, the Mississippi marketers view discussed efforts to implement supplier retail divorcement and/or divestiture as a "no win" proposition that, if implemented, would be of greater ultimate detriment to the wholesaler/retailer than the current trend of supplier practices.

As long as the spirit of competition, the reward of ingenuity and innovation, and the resourcefulness of independent entrepreneurship continue as vital principles in the American enterprise system, our association believes there will always be a place for its members in the petroleum marketing industry.

OFFICERS

Officers of the Mississippi Petroleum Marketers Association for 1982-83 are:

President - J. H. Lipscomb III
Vice-President - Billye Taylor
Vice-President - Dan Magruder
Secretary-Treasurer - Dan Waring
NOJC Director - W. W. Gresham, Jr.

Executive Director of the association is Steve Dickson.

MISSOURI OIL JOBBERS ASSOCIATION
Suite 3A • 238 East High Street • Area Code 314 • Phone 635-7117 • Jefferson City, Mo. 65101
November 19, 1982

JOHN R. HAHN, *Executive Director*

Missouri's motor fuel marketing is a microcosm of the entire country's problems because of our metropolitan areas of St. Louis, Kansas City, Springfield, Joplin, St. Joseph and Columbia/Jefferson City; wide-ranging rural areas and dozens of medium sized cities.

Our state is laced with more pipelines than almost any other—maps of them are enclosed—and then we have probably the longest river transportation system of any state with the entire longer Eastern side of the state bordered by the Mississippi River, and also we are sliced into two parts by the Missouri River.

All these sources of supply bring one of the most intensely competitive areas of the United States with all the attendant infighting for a slice of the shrinking gallonage, down from a maximum of more than 3,000,000,000 taxable motor fuel gallons in 1978 to fewer than 2,750,000,000 taxable gallons in 1982.

A terribly depressed economy has cut consumption more than conservation. We assemble more new automobiles than any state other than Michigan—at least in whatever normal times are perceived to be. This is only one dramatic example of reduced employment.

Therefore, our membership, predominantly small with more than half the members selling fewer than 777,000 gallons of taxable product annually, is particularly bruised by legitimately-reduced prices and many are wiped out by artificially reduced prices.

Credit card discount programs are typical of efforts by major oil companies to keep their volume and net at former levels at the expense of reduced traditional sales aids to jobbers and dealers. The jobber still has the major investment in property, including stations, terminals, long and short term leases and facilities through which more than 60 per cent of the product is marketed. At the same time, an oppressive and increasingly hostile supplier is heard to mutter that there is no place for the jobber in the future of marketing. Fortunately, this is not a universal opinion.

In other words, the jobber is supplying 70 per cent or more of the labor involved in marketing; by far most of the expense in marketing properties, vehicles, taxes and state and federal regulations—and doing it on an ever-shrinking share of the dollar coming in at the pump.

How does he do it? In a broad sense he definitely is not doing it with gasoline. The marketing function is subsidized by the most inventive Americans—the jobbers who seize an increasing share of their sustenance in selling items other than gasoline, notably through the convenience store, but in a dazzling array of diversifications which would have been beyond the wildest thoughts of a decade ago.

If the jobber is able to recapture a fair share of the retail dollar in the next decade, it will again become one of the most rewarding businesses because he will retain the intelligence gained from this period. His immediate problem, however, is basic. It is survival.

In the meantime, we have closed 40 per cent net of all our pumps and stations since Jan. 1, 1980; 25 per cent of the jobbers at that time are out of business today and our toughest competitor in these worst of times is our supplier(s). The consumer is now threatened with a diminished delivery system through the declining station numbers and ultimately higher prices.

Sincerely

John R. Hahn

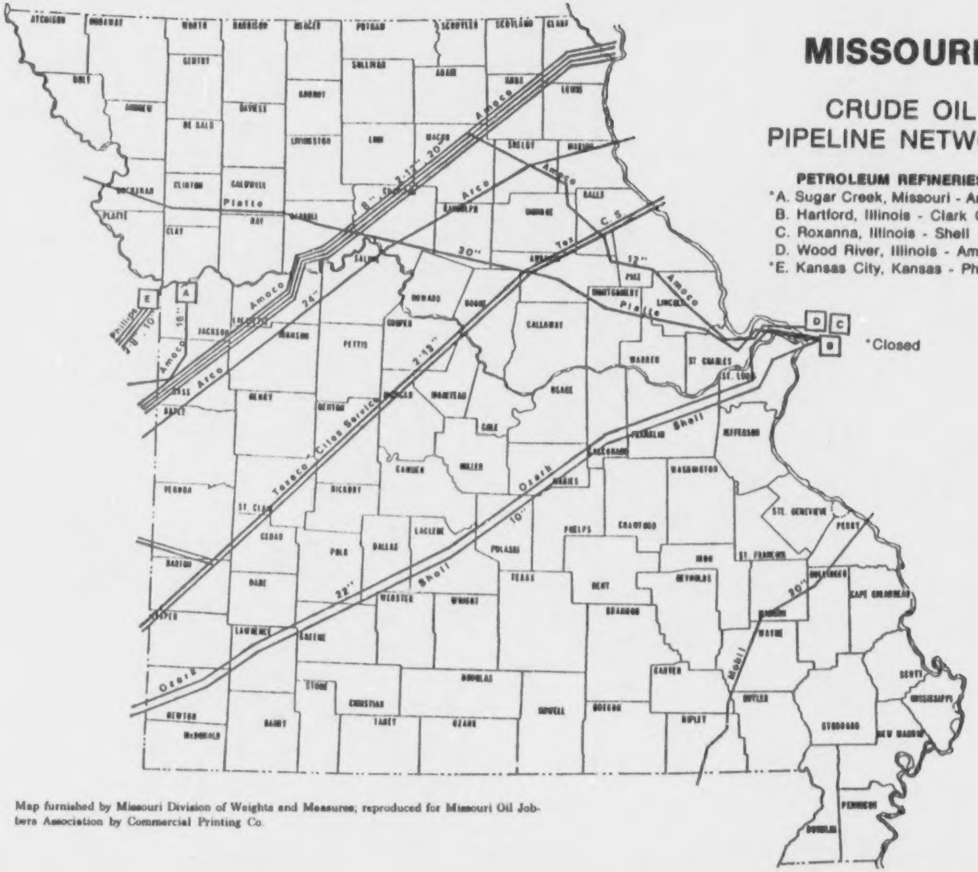
MISSOURI

CRUDE OIL PIPELINE NETWORK

PETROLEUM REFINERIES

*A. Sugar Creek, Missouri - Amoco
B. Hartford, Illinois - Clark Oil
C. Roxanna, Illinois - Shell
D. Wood River, Illinois - Amoco
*E. Kansas City, Kansas - Phillips

*Closed


Amoco
8"-12"-20"
Arco
Platte
Amoco
20"
Tex. C.S.
12"
Amoco
Platte
24"
Amoco
Arco
16"
Phillips
8"-10"
2-12"
Texaco Cities Service
Shell
Ozark
10"
Shell
22"
Ozark
Mobil
20"
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ATCHISON
NODAWAY
WORTH
HARRISON
MERCER
PUTNAM
SCHUYLER
SCOTLAND
CLARK
HOLT
GENTRY
SULLIVAN
ADAIR
KNOX
LEWIS
ANDREW
DAVIESS
GRUNDY
DE KALB
LIVINGSTON
LINN
MACON
SHELBY
MARION
BUCHANAN
CLINTON
CALDWELL
PLATTE
CLAY
RAY
CARROLL
RANDOLPH
MONROE
RALLS
SALINE
PIKE
AUDRAIN
MONTGOMERY
LINCOLN
HOWARD
BOONE
COOPER
CALLAWAY
JACKSON
LAFAYETTE
JOHNSON
PETTIS
WARREN
ST CHARLES
ST. LOUIS
CASS
MONITEAU
OSAGE
BATES
HENRY
BENTON
COLE
FRANKLIN
JEFFERSON
MORGAN
MILLER
GASCONADE
VERNON
CAMDEN
MARIES
WASHINGTON
ST CLAIR
HICKORY
STE. GENEVIEVE
PERRY
CEDAR
LACLEDE
PHELPS
CRAWFORD
PULASKI
ST. FRANCOIS
BARTON
POLK
DALLAS
IRON
TEXAS
DENT
REYNOLDS
MADISON
BOLLINGER
CAPE GIRARDEAU
DADE
WEBSTER
WRIGHT
SHANNON
WAYNE
JASPER
LAWRENCE
GREENE
SCOTT
DOUGLAS
CARTER
MISSISSIPPI
STONE
CHRISTIAN
HOWELL
OREGON
BUTLER
NEWTON
BARRY
TANEY
OZARK
RIPLEY
STODDARD
NEW MADRID
McDONALD
PEMISCOT
DUNKLIN

Map furnished by Missouri Division of Weights and Measures; reproduced for Missouri Oil Jobbers Association by Commercial Printing Co.

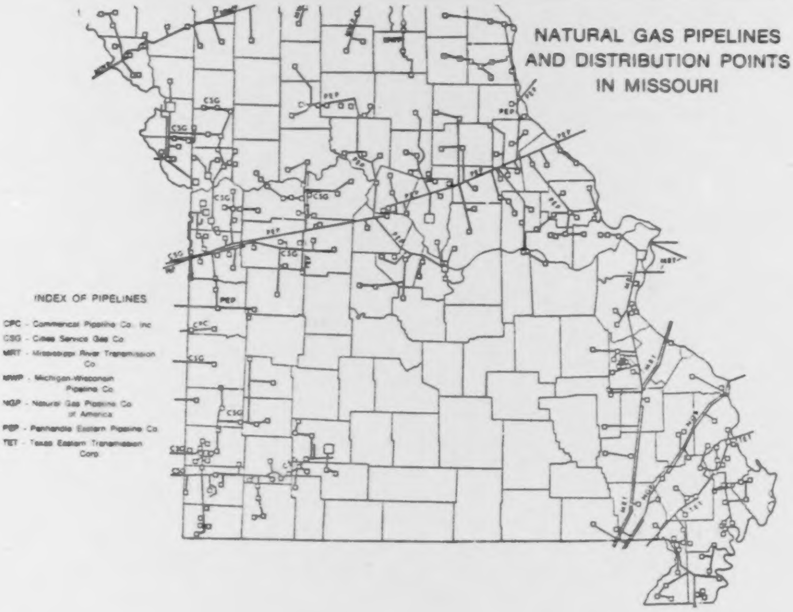
MISSOURI DEPARTMENT OF REVENUE

Motor Fuel Taxation

Comparison of Net Gallons of Motor Fuel Taxes by Months and Years

Calendar Year Collections

	Gallons 1978	Gallons 1979	Gallons 1980	Gallons 1981	1981 Increase Over 1980 Percent	Cumulative Increase 1981 over 1980 Percent
January	247,388,193	248,441,171	240,520,392	238,730,810	— .74	— .74
February	214,452,477	221,955,839	217,672,133	218,720,934	+ .48	— .16
March	202,556,977	211,513,736	199,265,617	182,753,466	—8.28	—2.62
April	250,870,968	257,379,343	224,868,371	219,364,379	—2.44	—2.57
May	252,635,654	243,443,058	233,759,339	234,581,960	+ .35	—1.96
June	269,556,038	260,309,067	238,571,581	227,870,504	—4.48	—2.40
July	287,593,433	252,128,613	235,103,798	249,067,354	+5.94	—1.18
August	274,277,895	250,613,433	243, 163,711	252,390,843	+3.80	— .52
September	291,109,001	273,366,902	243,794,576	241,336,899	—1.01	— .57
October	257,636,663	247,846,834	237,953,537	241,592,743	+1.53	— .36
November	277,357,157	257,702,233	251,078,113	240,059,515	—4.39	— .75
December	254,510,376	243,215,383	216,561,459	213,310,589	—1.50	— .81
TOTAL	3,079,944,832	2,967,915,612	2,782,312,627	2,759,779,996		



NATURAL GAS PIPELINES AND DISTRIBUTION POINTS IN MISSOURI

INDEX OF PIPELINES
CPC - Commercial Pipeline Co. Inc
CSG - Cities Service Gas Co
MRT - Mississippi River Transmission Co
MWP - Michigan-Wisconsin Pipeline Co
NGP - Natural Gas Pipeline Co of America
PEP - Panhandle Eastern Pipeline Co
TET - Texas Eastern Transmission Corp
CSG
PEP
MRT
TET
CPC
MWP
NGP

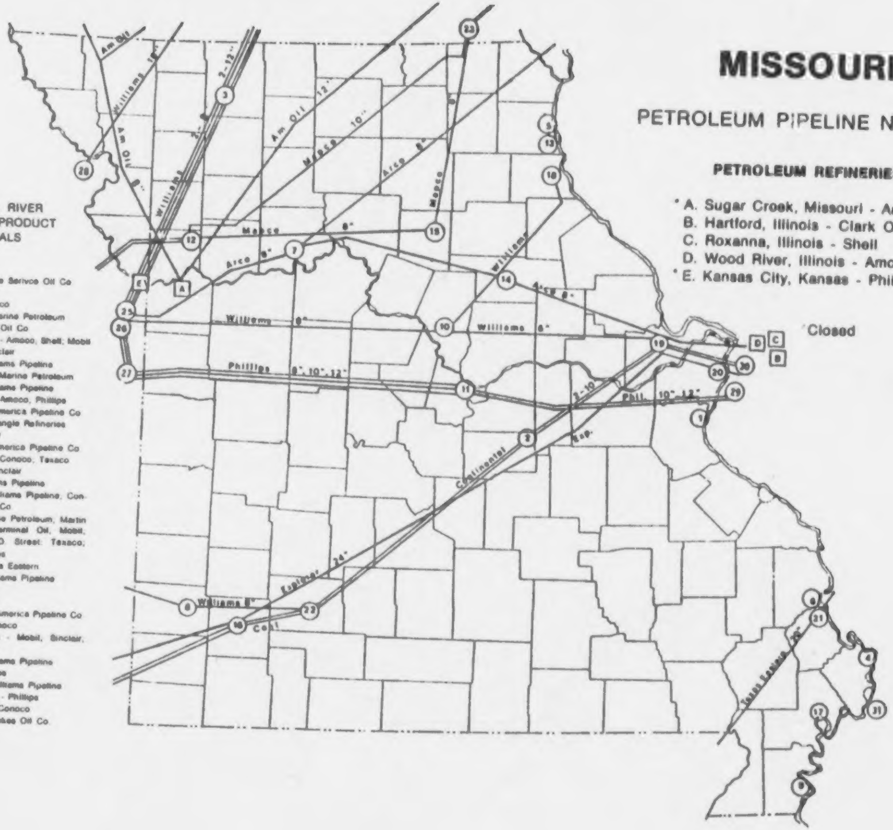
MISSOURI

PETROLEUM PIPELINE NETWORK

PETROLEUM REFINERIES

*A. Sugar Creek, Missouri - Amoco
B. Hartford, Illinois - Clark Oil
C. Roxanna, Illinois - Shell
D. Wood River, Illinois - Amoco
*E. Kansas City, Kansas - Phillips

*Closed


Am Oil
Williams 10"
2-12"
Am Oil 8"
Williams
Am Oil 12"
Mapco 10"
Arco 8"
Mapco
Mapco
8"
Arco 8"
Williams
Arco 8"
Williams 6"
Williams 6"
Phillips 8", 10", 12"
2-10"
Phil. 10"-12"
Continental
Explorer 24"
Williams 8"
Cont.
Texas Eastern
A
B
C
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PIPELINE & RIVER PETROLEUM PRODUCT TERMINALS

IN MISSOURI

1 Bernhart - Home Service Oil Co
2 Belle - Conoco
3 Bethany - Conoco
4 Birds Point - Marine Petroleum
5 Canton - Ayers Oil Co
6 Cape Girardeau - Amoco, Shell; Mobil
7 Carrollton - Sinclair
8 Carthage - Williams Pipeline
9 Caruthersville - Marine Petroleum
10 Columbia - Williams Pipeline
11 Jefferson City - Amoco, Phillips
12 Kearney - Mid-America Pipeline Co
13 La Grange - Triangle Refineries
14 Mexico - Sinclair
15 Moberly - Mid-America Pipeline Co
16 Mount Vernon - Conoco, Texaco
17 New Madrid - Sinclair
18 Palmyra - Williams Pipeline
19 St Charles - Williams Pipeline, Continental Pipeline Co
20 St Louis - Marine Petroleum, Martin Oil, Missouri Terminal Oil, Mobil, Shell, Shell, J.D. Street: Texaco; Triangle Refineries
21 Scott City, - Texas Eastern
22 Springfield - Williams Pipeline

OUT OF STATE

23 Carroll, IA - Mid-America Pipeline Co
24 Ottumwa, IA - Amoco
25 Kansas City, KS - Mobil, Sinclair, Williams Pipeline
26 Olathe, KS - Williams Pipeline
27 Paola, KS - Phillips
28 Wathena, KS - Williams Pipeline
29 East St Louis, IL - Phillips
30 Wood River, IL - Conoco
31 · Hickman, KY - Stokes Oil Co

MONTANA CHAPTER
INTERMOUNTAIN OIL MARKETERS ASSOCIATION

November 19, 1982

RE: REPRESENTATIVE BERKLEY BEDELL & HEARINGS ON SUPPLIER RELATIONS
MONTANA CHAPTER OF INTERMOUNTAIN OIL MARKETERS ASSOCIATION

The Montana Chapter of IOMA represents approximately 275 gasoline and diesel fuel distributors within Montana. These marketers sell petroleum products at both wholesale and self-service retail. Their sales represent an estimated 70% of all the petroleum products sold in the State. Members range in size from small rural family businesses to large multi-location self-service businesses.

Montana's six refineries are supplied in part by crude oil produced within the State. The two major oil refineries of Conoco and Exxon are both located in Billings whereas the smaller independent refineries are scattered in other areas of the State.

Montana has seen the exodus of three major suppliers, namely, Texaco, Amoco (Standard Oil of Indiana), and Phillips, leaving a high percentage of independents supplying the State.

Montana suffers from the same problems experienced by other Intermountain States. Volumes are down, consumers are price conscious as evidenced by the 69% figure for self-service, and business is extremely competitive.

Marketers are having a very difficult time maintaining any profit picture under these circumstances.

The future is impossible to predict but it is easy to see that the present condition in the petroleum marketing is unhealthy with low or even negative profits. Many will not survive unless some changes are made.

Respectfully,

Gerald Tedrow

Gerald W. Tedrow
Executive Director

GWT:pw

cc: Howard Wheatley, President
H. W. Distributing
Great Falls, Montana

NEVADA CHAPTER
INTERMOUNTAIN OIL MARKETERS ASSOCIATION

November 19, 1982

RE: REPRESENTATIVE BERKLEY BEDELL & HEARINGS ON SUPPLIER RELATIONS
NEVADA CHAPTER OF INTERMOUNTAIN OIL MARKETERS ASSOCIATION

The Nevada Chapter of IOMA represents approximately 70 gasoline and diesel fuel distributors within Nevada. These marketers sell petroleum products at both wholesale and self-service retail. Their sales represent an estimated 65% of all the petroleum products sold in the State. Members range in size from small rural family business to large multi-location self-service businesses.

Nevada has no refineries in the State except for one very small one in Tonopah and, therefore, must import nearly all the products sold in the State. Because of Nevada's dependence it becomes particularly vulnerable to shortages and surplus problems outside the State.

Nevada suffers from the same problems experienced by other Intermountain States. Volumes are down, consumers are price-conscious as evidenced by the 73% figure for self-service, and business is extremely competitive.

Marketers are having a very difficult time maintaining any profit picture under these circumstances.

The future is impossible to predict but it is easy to see that the present condition in the petroleum marketing is unhealthy with low or even negative profits. Many will not survive unless some changes are made.

Respectfully,

Gerald W. Tedrow
Executive Director

GWT:pw

cc: Jim Kuraisa
c/o Bi-State Petroleum
Sparks, Nevada

NEW HAMPSHIRE GASOLINE MARKET

By: Wilfred H. Hall
Independent Oilmen's
Association of NE
10 Vaughan Mall
Portsmouth, NH 03801

Size and Makeup of Gasoline Distribution

New Hampshire uses approximately 510 million gallons of gasoline annually, (see exhibit #1). Two thirds of this is marketed by independents, (see attached computation, exhibit #2, based on state tax revenues).

There are 56 licensed independent distributors based in New Hampshire and 45 non New Hampshire based independent distributors who, together with 13 major oil companies market gasoline in the state. Phillips Petroleum has vacated the state and both Shell and Amoco are merely working out agreements which will leave the state with 11 major oil companies. Other refiners are expected to vacate, which will increase share of market delivered by independents.

Due to the rural nature of the state, major oil company activity tends to be evidenced principally in larger cities and the state is highly dependent for its distribution (and storage) by independents and as mentioned previously, this dependency will likely increase.

Major refiners have been losing share of market with a high of 40% in 1980 down to 33.2% in August of 1982.

Margins

Major refiners appear to be using their upstream profits to subsidize their direct marketing operations at service station level and thereby leading margins of jobbers to historical low levels as a % of sales.

Majors have used various devices to squeeze independents including:

- Making them bear the costs of refiner credit cards (which by law cannot be passed on to customers).
- Utilizing the Alaskan windfall tax exclusion to lower retail prices at their own stations beneath any reasonable positioning a jobber might make.
- Shortening lines of credit to jobbers.
- Eliminating hauling allowances.

Arco is a case in point. Arco has jumped its market share from 1.5% of the total market in August of 1981 to 2.9% of the market in August of 1982 and doubled its gallonage sales.

Arco's savings by not offering credit cards is likely in the 3¢ to 4¢ a gallon area (what other major refiners are charging for credit card services) yet their postings are often as much as below the market. This differential is thought to principally stem from the fact Arco's Alaskan crude is exempt by law from the windfall profits tax. In any case, Arco's pricing has been a significant factor in the deteriation of gasoline margins in New Hampshire

Retail Outlets

The number of retail gasoline outlets in New Hampshire has diminished as follows:

1975	888	
1978	657	
1979	632	
1980	606	(See Exhibit #1)

This has come about because of the following factors:

1. Reduction in gasoline demand (smaller lighter cars).
2. Changing consumer buyer habits to use:
    a. self service
    b. C-store gasoline combinations
3. Inflation increasing station costs.
4. Higher gasoline costs requiring more capital to operate a station.
5. Less consumer need for services offered by older Bay stations.
6. Pressure from major oil company direct marketing stations which lowered operating margins at retail.

Further attrition in number of operating units at retail is expected.

Supply

New Hampshire's gasoline supply comes mainly from the Boston terminaling area to supply the southern tier of the state and from Portland, Maine to service the northern tier. Some product in western sections creeps in from Vermont. There's very little gasoline storage in the state owned by major oil companies - most of that which exists is in jobber hands.

Exhibit #1

GASOLINE CONSUMPTION

(000 gals)

STATE	1980	1975	1970
ME	517,014	536,051	471,242
NH	411,214	403,324	348,120
VT	238,842	240,272	214,810
MASS	2,301,675	2,313,488	2,085,513
RI	381,826	388,108	346,075
Totals	112,628,554		

# SERVICE STATIONS

# of Units

	1980	1979	1978	1975
ME	804	838	871	1,262
NH	606	632	657	888
VT	464	484	503	616
MASS	3,341	3,484	3,622	4,306
RI	559	625	650	816
Total US	146,523		216,509	

Source, NPN Fact Books

Exhibit #2

NEW HAMPSHIRE GASOLINE SALES

1980-1982 for August
(Nearest 000 gallons)

	1980	1981	1982
American	41	42	53
Arco	484	565	1,067
BP	-0-	1,963	1,067
Chevron	554	490	422
Cities	674	801	785
Exxon	2,685	2,626	2,712
Getty	1,283	713	714
Gulf	2,064	1,113	1,112
Mobil	3,466	2,182	1,896
Phillips	-0-	-0-	-0-
Shell	1,035	586	536
Sun	1,098	715	689
Texaco	817	830	1,007
Total	15,493	12,626	12,060
Total Month	38,409	36,649	36,381
Refiner Share Sold by non-refiners	40.3%	34.5%	33.2%
Arco Share Market	1.2%	1.5%	2.9%

Independents 101 as of August, 1982

Majors 13

45 of Independents from other states

Source: State Tax Records

66 Morris Ave. P.O. Box 359 Springfield, N.J. 07081 · (201) 379-1100

Gasoline Jobbers Division

Fuel Merchants Association of New Jersey

November 22, 1982

Mr. Phil Chisholm, Executive Director
National Oil Jobber Council
1707 H Street, N.W.
Washington, D.C. 20006

Dear Phil:

In response to your request, we are happy to provide the following information on gasoline marketing in New Jersey.

New Jersey is made up of 21 counties, primarily urban and suburban and approximately 15% of the area could be classified as rural. Jobbers are represented in all counties. Thirteen principal refiners supply and market in the state. Amerada Hess, Amoco, Arco, BP, Chevron, Citgo, Exxon, Getty, Gulf, Mobil, Shell, Sunoco and Texaco. All but Hess, Arco and Shell supply our branded jobbers and market in direct competition with jobbers of the same brand, consequently jobber supplied dealers expect to purchase at the same dealer tank price the refiner direct supplied dealers pay. Thus jobbers are forced to establish a higher dealer tank wagon price and lose dealers and volume or establish a competitive dealer tank wagon price and sacrifice earnings. In addition, seven independent refiners supply a relatively small share of the market.

Our present membership consists of 69 members, two thirds of them are also in the retail fuel oil business. Gasoline volumes range from 1,000,000 gallons annually to over 50,000,00 gallons. Our membership is primarily branded. Jobbers service approximately 1000 retail outlets and over 5000 commercial accounts and account for approximately 18% of the gasoline sold in the state. We have lost 5 member jobbers in 1982 thru sell out, mergers or bankrupcy, we anticipate a loss of 4 more jobbers in 1983. In 1974 we had 86 jobbers on our roster. Our mortality rate would be greater if many of our members were not in the fuel oil business.

The following policies and practices of refiner marketers have been reported as being in effect, or announced prior, to November 12, 1982.

Amoco, Exxon, Getty, Gulf, Mobil and Texaco have placed maximum limits on the amount of product a jobber may lift, while allowing direct supplied stations unlimited volume.

Gulf, Chevron and Mobil have been soliciting independent dealers offering discounts equating to jobbers buying price, in some instances soliciting jobber supplied dealers of the same brand. Texaco's direct supplied retail dealers are purchasing gasoline at prices equal to or below the price charged to jobbers, the Texaco rebate program applies only to direct retail dealers, not jobbers. The Sunoco Competitive Allowance Program does not apply equally to jobbers and dealers. Service stations owned and operated by Texaco, Arco and BP are posting pump prices, equal to, or as much as $.01 below jobbers buying prices. In South Jersey, Citgo jobbers would realize $.005 per gallon earnings if their jobber supplied stations were to meet pump prices at Citgo direct supplied retail outlets. Exxon in a recent move reduced jobber margins by 25% by increasing prices to jobbers while not increasing dealer tank wagon price.

Amoco, BP, Citgo, Chevron, Exxon, Mobil, Sun and Texaco have eliminated traditional hauling allowances by going to rack or terminal pricing. Gulf and Getty are reported to be going to rack pricing by January 1, 1983. A most costly move for jobbers a distance removed from their supply point.

Amoco, Citgo, Chevron, Gulf, Mobil and Texaco have introduced credit card processing fees and at the time reduced dealer buying price $.005 to $.007 more than to jobbers. Another erosion of jobbers earnings.

As a result of all the above manipulations and practices, jobbers historical spread and earnings potential has been reduced by approximately 50% below a reasonable profit level. The average jobber in New Jersey is operating today on a 3% spread jobber to retailer. I do not believe any other viable industry successfully operates on a 3% spread between wholesaler and retailer. A minimum 5% spread is necessary to produce a reasonable profit and return on investment for New Jersey jobbers.

It is evident that refiner marketers are intent on gaining control of the retail gasoline market, even at the expense of the jobber segment which those same refiners promulgated and propagated. However, while jobbers are an "endangered species" we do not intend to see them become an "extinct species."

Very Truly Yours,

FC Haviland

Francis C. Haviland
Executive Director

Lawrence W. Ray, Ray Petroleum Co., Dover, N.J. is our President
Richard B. Chodosh, CPO, Inc. Rahway, N.J. is NOJC Director

ESPA
EMPIRE STATE PETROLEUM ASSOCIATION, INC
8 WESTCHESTER PLAZA • ELMSFORD, N.Y. 10523 • 914-592-881

THE EXISTING NEW YORK MARKETPLACE:

New York State by its size, northeast geographic location and the diversity of its population densities is a complex state. Distribution of petroleum products in NY has been traditionally accomplished by one of the most highly developed delivery systems existing in the entire United States. Petroleum products enter NY via tanker ship, barge, pipeline and truck transport.

ESPA REPRESENTS:

Independent petroleum marketers purchase, store, transport and distribute to end use customers,nearly 80% of vital heating oils and 40% of the state's required motor fuels. Independent New York based marketers also provide a wide array of other products and services to the consumers of our state.

The Empire State Petroleum Association represents more than 550 individual company members.

According to a recent marketing study conducted on behalf of ESPA by a leading university, the 'average' member of this association:

- Competes with 10 other petroleum marketers and several suppliers of alternate energy sources (utility companies, etc),
- Provides employment for 16 full-time persons and 3 part-timers,
- Is supplied by 2 or 3 major oil companies,
- Owns a petroleum storage facility,
- Primarily sells #2 fuel oil and gasoline totaling 5.8 million gallons a year.

'SITUATIONS' FACING NY MARKETERS:

- Marketing withdrawals by traditional 'crude oil rich' suppliers from NY may eventually lead to lessened competition and potential future supply disruptions given no federal strategically located petroleum reserves in the northeast. Texaco, Shell and Exxon have recently withdrawn from upstate NY markets. ESPA suggests the establishment of a 'decentralized' regional petroleum reserve as 'insurance' against potential supply disruption,

- Stringent credit requirements and severe 'cash flow' problems for independent marketers caused by such factors as; continued high bank interest rates, supplier credit changes vis-a-vis independent marketers, the depressed overall economy and the absolute decrease in consumption of petroleum products,
- Several onerous major oil supplier marketing practices which appear to offer extremely questionable competitive advantages to an individual supplier's own directly supplied customer while the independent petroleum marketing class of trade is squeezed,
- Inequity of ever increasing petroleum tax burden upon the New York consumer and our economy. Imposition of both federal and producer state petroleum taxes impact more heavily on our region of the country,
- A need to recognize that northern climate conditions coupled with resulting heating energy demands, necessitates the need for continued federal assistance to many constitutent consumers.

ESPA CONTACTS:

NOJC Director/ESPA Board Chairman:	Mr. William E. Campbell Campbell Oil Company Olean, NY
ESPA President:	Mr. Fredric Giffords Giffords Oil Company Floral Park, NY
ESPA Staff:	Mr. Robert D. Lynch, Mr. Keith Ore ESPA Elmsford, NY 10523

November, 1982

NEBRASKA PETROLEUM MARKETERS, INC.

(Establish 1920)

1320 J STREET
LINCOLN, NEBRASKA 68508
TELEPHONE (402) 474-6691

OFFICERS

BILL SAPP, Omaha
President

HAROLD SWANSON, Ft. Calhoun
President-Elect

RON SCHWINDT, North Platte
1st Vice President

GEORGE L. WATTERS, Lincoln
Secretary-Treasurer
Executive Director

KERMIT ANDREWS, Blair
N.O.J.C. Director

DIRECTORS

DON BAHDE, Kearney
TOBY DELLAMANO, Omaha
REX EKWALL, Omaha
BILL GANGEL, Nebraska City
BRUCE JOHNSON, Alliance
MARV KNUTSEN, Kimball
TOM LIPPINCOTT, Blair
BILL MEISINGER, Norfolk
DICK NELSON, Geneva
EARL NOLTE, Nehawka
JIM PAPPAS, North Platte
ASA POLLARD, Clarks
CHARLEY SALEM, Lincoln
DENNIS SALMEN, Trumbull
BILL SAPP, Omaha
RON SCHWINDT, North Platte
HAROLD SWANSON, Ft. Calhoun
WAYNE VAN ENGEN, Adams
EILERT WILHELMS, Bruning

JIM GILLEY, Hastings
(Ex-Officio)

MARKETING PRACTICES IN THE STATE OF NEBRASKA

The State of Nebraska is basically an agricultural state with two cities of over 150,000 population and over 400 towns that range in population of 5,000 and under, with only half dozen small cities in between.

The average oil jobber distributes 1 million gallons of refined products of which about 60% is sold in the agricultural segment. This average oil jobber owns 3 service stations, two tank wagons, one bulk plant and about 2/3 of a transport.

We are supplied by 13 branded companies, namely: Total Petroleum Company; Champlin Petroleum Company; Conoco, Inc.; Derby Refining Company; Farmland Industries, Inc.; Getty Refining and Marketing Company; Husky Oil Company; Kerr-McGee Refining Company; Land O'Lakes, Inc.; Mobil Oil Corp.; Pester Refining Company; Phillips Petroleum Company; and Standard Oil Division of Amoco Oil Company; plus 11 brokers.

The Nebraska Petroleum Marketers, Inc., is a state association of petroleum distributors, or oil jobbers, consisting of 428 members. This is down from 520 from January 1, 1981. Oil jobbers deliver over 95% of all refined products used in Nebraska with the only exception being about 100 service stations being owned and operated by refiners and a very small number of refiner agents operating out of bulk plants. Approximately 80% of these oil jobbers are major branded jobbers with the rest being either independent, private branded or unbranded.

From returns of a survey taken recently it would appear that we stand to show a further loss of jobbers in the state by up to 40-50% within the next 12 to 24 months. This would result from several things including some actions taken by major refiners which have had a devastating affect upon the jobber population in this state. Coupled, of course, with the economic conditions that now exist.

The single most often repeated complaint concerns the practice of suppliers selling at retail prices in their own stations at below, or very slightly above, their wholesale cost to jobbers. Which, of course, has the effect of running the competition out of business. The second most often compaint was the surcharge placed on credit card sales by suppliers. It is common knowledge among marketers who have been in the business for over 6 or 7 years that the oil industry spent literally hundreds of millions of dollars over the years promoting their credit cards. Now once they have educated the driving public to make their purchases on credit cards, they have passed the expense of those cards down to the jobbers and dealers.

The third most often repeated complaint, and in my opinion the most serious, is the minimum and maximum purchase clause that most refiners have put into their jobber contracts. This is absolutely an impossible agreement to live up to. In Nebraska there are over 75,000 irrigation wells which use an average of over 100 gallons of product per day while they are running. (only about 30-35% of these are fueled by refined products). During the growing season of 1981 and 1982, the irrigation business was as low as it has ever been due to timely rains that were adequate in quantity. Thus, few jobbers were able to draw even their minimum allocation as established by the refiner/suppliers in their contracts. Thusly, according to the terms of these contracts their minimum and maximum were reduced to reflect their actual purchases. Should 1983 or 1984, be a dry year, there will be no way that our jobbers could possibly meet the demand for product to run these irrigation wells with a reduced allocation and an increased demand. It is absolutely essential that refiners not be permitted to include "fixed" gallonage figures into contracts where demand is governed by the weather.

And, finally, the practice of refiners selling commercial, or industrial, accounts, who may be only buying one or two loads at prices below their jobber accounts who are competing for this same business.

Practices today by refiner/suppliers are reminiscent of the tough, competitive days of the '50's and 60's where the only thing that mattered to suppliers was total gallons sold. Everything that is going on today that is despicable relates to the refiners greed for a few more gallons and it matters not who is hurt or put out of business.

Time is of the essence. Within two years the ranks of the so-called independent small oil marketer will be reduced to the point where the driving public will have to seek out a place to purchase his petroleum needs. In the plains states of this great country, there will be small towns without a single service station to fulfill their needs and the farmers will have to pay a higher cost for fuel delivered from longer distances.

There is nothing bright about the future of petroleum distribution. When refiners/suppliers, who control your source of supply, your costs, and then in turn compete in the same market with yōu, you are at their mercy. They have control of your destiny and you will only exist so long as they desire to let you.

Today there does not exist an "independent" petroleum marketer. Only "puppets" who must abide by restrictive contracts that were forced upon them at a time when they had no other company to turn to for supply.

George L. Watters
Executive Director

W. D. Sapp
President

Charles G. Salem
NOJC Director

VAUGHN OIL COMPANY
4601 DOUGLAS STREET
OMAHA, NEBRASKA 68132
TELEPHONE 345-8050

CONOCO
Distributors of Petroleum Products

November 15, 1982

Mr. George L. Watters
Nebraska Petroleum Marketers, Inc.
1320 J Street
Lincoln, Nebraska 68508

Dear George:

We'll attempt to address your questions as briefly and concisely as possible. We'll concentrate on what we feel to be the most important issues.

One of the more common obstacles we face is competition with our own major supplier for high volume commercial accounts. For example, the refiner will distribute to a local commercial business at a lower discounted rate than to the jobber. This action places us at an impossible competitive position and reflects the refiner in a bad light with the customer. Confusion and mistrust with the customer harms both supplier and jobber in the public image. In our judgment it is a grossly unfair business practice and should be eliminated. Elimination of this abuse would further ease the financial burden of a large number of jobbers.

Second, we do not feel that the service station dealers should be saddled with a credit card surcharge burden. The charge should be directed to the logical source - the consumer who pays for the gasoline and/or service station services. This procedure would basically be no different than any other type of credit card purchase, in which the customer must pay for his/her credit card privileges. Maryland incidently, believed in this issue strongly and made it illegal to charge service station dealers with a credit card charge. Furthermore, offering a rebate to jobbers and dealers, to compensate for the charge, merely dodges the issue. Loyal credit card customers are entitled to equitable pricing and non-discriminatory prices, especially today when major oil companies preach the importance to our "full service" customers. Cash rebates are a "slap in the face" to this group, who depend on our complete dedication and fairness.

Finally, refiners and jobbers should be legally bound to choose between "selling wholesale" or "retailing." Presently, dealers are pitted against dealers, wholesalers against wholesalers, in an artificially created market- a market which creates a completely lobsided, unequal and unfair price distribution. Something is drastically wrong when an oil company competes against it's own jobbers for a better share of the market, particularly when the company is basically set up as a wholesale business. Something is also drastically wrong when a jobber (who is also in the retailing business) can offer a selective, discriminatory price to his own retail stations and another to his additional dealers.

This type of pricing is not legalized in other forms of business. Why are these actions tolerated in the oil industry?

To undertake the solution of these issues will require a substantial amount of unity, compromise and support but we feel, as does the Maryland legislature, that the welfare and livelihood of many jobbers and dealers is at stake.

We thank you for taking time to listen to our problems and proposed solutions. We do sincerely hope that a satisfactory solution to these issues can be reached.

Sincerely,

Craig Estee

Craig Estee
Sales Representative

CE bws

Nebraska Petroleum Marketers, Inc.
1320 J St.
Lincoln, Ne 68508

11-15-82
Sterling, Ne
6844

Dear Sirs;

One of the largest problems that face the small jobber in rural areas today is the pricing policies by company owned stations and large jobbers in larger cities that price equal to, or just a penny or two above the small jobbers' cost. This, in turn, has people in rural areas believing that the small jobbers are getting a larger margin. The rural jobber has very little cash business. Large city business seems to be self-service-cash. People that use full service are the ones who can afford this service such as upper middle class - doctors - lawyers - bankers - etc. There are very few of these kind of people in rural communities.

I can understand a station selling 100,000 gal per month and up might survive; but in a small rural town of 1000 or less, there are only so many customers that buy gas. Two stations would be lucky to pump 50,000 together.

In a small town, a station might pump 8000 to 10 000 gal a month [illegible] at some. a 10 ¢ [illegible]

would put a family on "poverty level".
Add 10¢ to a small jobbers price and be in
5¢ to 9¢ above larger cities.

The future looks very dim for the small
jobber in rural areas.

HE IS ON HIS WAY OUT!

Thank you,

Sincerely

Jay Carpenter Pres

of Carpenter Oil
Sterling, Ill. 61443

Please return to: Nebraska Petroleum Marketers, Inc.
1320 J Street, Lincoln, Ne 68508
NO LATER THAN November 16th.

PROBLEMS FACING YOU AS A JOBBER OR WHAT IS YOUR MARKET SITUATION?

Please describe or list and explain any market problems facing you, such as; credit card surcharges, loss of normal business practices, predatory pricing, discriminatory price and allocation policies, etc.

Please feel free to describe any problems that you have with a particular supplier. And, if possible, send documentation.

Problems facing me as a jobber is always changing. I felt that the surcharge on credit cards was a mistake. I feel when we where taking company cards as well as Bank cards we had a little edge on the C-Stores and discount houses selling gasoline, the margon keeps going down to where we cannot compete.

In my location where we depend on farm trade our allocation program on fuels is not the best, because we have a set gallons per monthwhich is set up on a yearly contract and this is based on the preceding year and as I am sure that you know that there is no two years alike. Then we have to go back and try to get more fuel or make alot of changes. With the price up and down no one can buy or wants to buy the product ahead. This means one has to/back and renegotiate to increase one's business.

I did forget to say above that my dealers 3 percent on credit cards is about $300 to 400 dollors per month and they are not big dealer if you ask me these companies are getting good pay for handling there cards.

I guess to make a long story short the Jobber business is coming to do business instead of doing business to make money.

Thank you for your interest.

Signed: Warren L. Taylor
Company Taylor 66 Oil Co., Inc.
Address 318 South 3rd
City, State, Zip Albion, Neb. 68620

Please return to: Nebraska Petroleum Marketers, Inc.
1320 J Street, Lincoln, Ne 68508
NO LATER THAN November 16th.

PROBLEMS FACING YOU AS A JOBBER OR WHAT IS YOUR MARKET SITUATION?

Please describe or list and explain any market problems facing you, such as; credit card surcharges, loss of normal business practices, predatory pricing, discriminatory price and allocation policies, etc.

Please feel free to describe any problems that you have with a particular supplier. And, if possible, send documentation.

George

We belong to three state associations

Nebraska - Iowa - Missouri

I'm also becoming a believer that there should be government or a bill in each state or the U.S.A that everybody should be required to charge at least .03% - .04% - .05% or some percent over their cost on everything they sell. This might help to solve some unemployment - the bankruptcy problem, but I realize it is just some more government interference which I hate. But I do believe it is a problem. We retail price at $\$1.17^{9}$ as a Cipco Station division of Total Petroleum and then for no apparent reason Vickers retail drops price to $\$1.13^{9}$ other than lack of volume. Vickers a division of Total Petroleum are also

Signed:

Company: [illegible]

Address: 757 Office Park Road Suite #335

City, State, Zip: West Des Moines, Iowa 50265

Please return to: Nebraska Petroleum Marketers, Inc.
1320 J Street, Lincoln, Ne 68508
NO LATER THAN November 16th.

PROBLEMS FACING YOU AS A JOBBER OR WHAT IS YOUR MARKET SITUATION?

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Please feel free to describe any problems that you have with a particular supplier. And, if possible, send documentation.

The 5¢ per gallon usage tax President Reagan is putting together, will keep more people off the roads. the way the Govt. office wrote - it would take 6¢ a gallon to run the program - so the end result would be a loss -

My Supplier amoco oil company - sells fuels to a alfalfa mill here in Gothenburg at a Lower cost than they will sell to me the Jobber -

High interest Rates (15%)

~~Rate~~ Wholesale cost of propane taking such a Large price jump this fall.

Business is slow - both in county and on I-80 -

Signed: Keith L. Morley

Company KLM Dist Co.

Address Box 341

City, State, Zip Gothenburg Ne
69138

Have been trying to sell the business for 4 years no one interested in investing in petroleum business -

Here in Gothenburg in the last 7 years. the number of gasoline stations have dropped from 14 in 1975 to 7 in 1982. the number Of Banks from 1975 to 1982 have Doubled 2 = 1975 4 = 1982 you can see where the money is being made - and lost -

I feel the oil companys are penalizing the Customer who pay with a Credit Card. in our situation, we have seen the number of Credit Card's drop from an appx. 40 Cards a day to 10 Cards a day - the program is effective - we give a 6¢ a gallon discount to be competitive with our Competitions Price.

Not to many good things to say about amoco oil Company. I feel they have gone down hill in doing things to help its Jobbers. They are doing more to help themselves. Used to be a 50-50 (there profit and ours) street now they want 90% of the street.

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Please feel free to describe any problems that you have with a particuler supplier. And, if possible, send documentation.

We have been in the oil jobbing business for over 25 years this is the first time the retail price on the pumps in some of the stations in our city are below what the cost of product is to us. I believe some of the oil Companys are behind the lower pricing on the market place

Signed:
Company--Crystal Oil Co.
Address--So. Sioux City, Ne.
City, State, Zip--68776

Please return to: Nebraska Petroleum Marketers, Inc.
1320 J Street, Lincoln, Ne 68508
NO LATER THAN November 16th.

PROBLEMS FACING YOU AS A JOBBER OR WHAT IS YOUR MARKET SITUATION?

Please describe or list and explain any market problems facing you, such as; credit card surcharges, loss of normal business practices, predatory pricing, discriminatory price and allocation policies, etc.

- Please feel free to describe any problems that you have with a particular supplier. And, if possible, send documentation.

I want to know why my buying price (as a jobber) in Crofton, Neb. which is 100 miles South of Sioux Falls So Dakota is the same as the price on the pumps at Sioux Falls So Dakota. I would call this discriminatory pricing. Credit Card Surcharge (as soon as Mobil put on the 3% surcharge they allow us to accept all major Credit Cards as long as we are paying the bill.

The Farm prices have to improve or we will all go under with them because of their inability to pay for high energy prices

Signed: [illegible] Steffen
Company Steffen Mobil
Address Crofton
City, State, Zip Nebraska
68730

Please return to: Nebraska Petroleum Marketers, Inc.
1320 J Street, Lincoln, Ne 68508
NO LATER THAN November 16th.

PROBLEMS FACING YOU AS A JOBBER OR WHAT IS YOUR MARKET SITUATION?

Please describe or list and explain any market problems facing you, such as; credit card surcharges, loss of normal business practices, predatory pricing, discriminatory price and allocation policies, etc.

Please feel free to describe any problems that you have with a particular supplier. And, if possible, send documentation.

It is becoming more and more difficult for jobbers and service station operators to survive in today's market place. Some of the things that are responsible for our dilemma are:

1. On October 1, 1981, our primary supplier went from a delivered price for refined products, without an offsetting reduction in our cost, to an FOB terminal pricing.
2. On June 15, 1982, this same supplier initiated a 2½% credit card processing charge.
3. All of our dealers are in rural small town locations where the potential for high volume is non-existent. Many of our regular service station customers can not understand how a convenience store in a larger community can price self serve gasoline six to seven cents under what the station operator in the small town can post.
4. The cost of labor, interest, utilities, taxes, insurance and general maintenance expenses make it virtually impossible to operate a service station on a five cents or less margin.

Unless something is done to correct this disparity there will be fewer jobbers and service stations in operation in the immediate future.

Signed: Ken Cary
Company Alma Oil of Nebraska
Address Box 558
Alma, Nebr.
City, State, Zip 68920

Please return to: Nebraska Petroleum Marketers, Inc.
1320 J Street, Lincoln, Ne 68508
NO LATER THAN November 16th.

PROBLEMS FACING YOU AS A JOBBER OR WHAT IS YOUR MARKET SITUATION?

Please describe or list and explain any market problems facing you, such as; credit card surcharges, loss of normal business practices, predatory pricing, discriminatory price and allocation policies, etc.

Please feel free to describe any problems that you have with a particular supplier. And, if possible, send documentation.

The main problem we have is the 3% charge on company credit cards. It has had the effect of cutting the dealers margin 4¢ per gal. which is all going to the major companies (Mobil oil) Bottom line. Mobil is now taking all major oil company credit cards. How curious that they decided on this practice now that they are getting 3% on all credit card transactions.

Signed:
Company BOB MARTENS OIL Co.
Address Box 342
City, State, Zip SEWARD NE
68434

Please return to: Nebraska Petroleum Marketers, Inc.
1320 J Street, Lincoln, Ne 68508
NO LATER THAN November 16th.

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Please describe or list and explain any market problems facing you, such as; credit card surcharges, loss of normal business practices, predatory pricing, discriminatory price and allocation policies, etc.

Please feel free to describe any problems that you have with a particular supplier. And, if possible, send documentation.

① Suppliers selling at their company owned stations below our jobber buying price.

② Suppliers charging us for credit card sales but not imposing a charge or higher price for credit card sales at their company owned stations. Very confusing to the public, why do they have to pay a higher price for using their creditcard at one station, but not another of the same brand?

Signed: Jim Anderson
Company Hunter Oil Company
Address
City, State, Zip Minburn IA 50167

Please return to: Nebraska Petroleum Marketers, Inc.
1320 J Street, Lincoln, Ne 68508
NO LATER THAN November 16th.

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Please feel free to describe any problems that you have with a particular supplier. And, if possible, send documentation.

Continued predatory pricing by direct company operations and/or large independent chains could eventually cause the small marketer into bankruptcy. No one likes government involved with free enterprise but it turns my stomach that the state gets 14 cents/gal and I can't even make a nickel and I have to pay all the overhead. Perhaps we need a percentage minimum profit such as the cigarette industry has in this state.

Also future changes in the oil compan billing program could force many heavily financed operations out of business. Any changes in the 1% -10 days should be made gradually rather than abruptly.

Signed: Larry Coffin

Company COFFIN'S CORNER INC.

Address 1619 W. 2nd

City, State, Zip Grand Island, NE 68801

Please return to: Nebraska Petroleum Marketers, Inc.
1320 J Street, Lincoln, Ne 68508
NO LATER THAN November 16th.

PROBLEMS FACING YOU AS A JOBBER OR WHAT IS YOUR MARKET SITUATION?

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Please feel free to describe any problems that you have with a particular supplier. And, if possible, send documentation.

Our main problem in our area, are the discount stations selling gas for what it cost us. It also creates a problem on the tank wagon as to many people wondering why tank wagon prices don't meet with station prices I have tried to explain the reason for it, but they don't believe it and accuse us of over charging them.

Signed:
Company- Farmers Union Coop
Address- P.O. Box 575
City, State, Zip Fairbury Nebraska
68352

Please return to: Nebraska Petroleum Marketers, Inc.
1320 J Street, Lincoln, Ne 68508
NO LATER THAN November 16th.

PROBLEMS FACING YOU AS A JOBBER OR WHAT IS YOUR MARKET SITUATION?

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Please feel free to describe any problems that you have with a particular supplier. And, if possible, send documentation.

one Major Problem is surcharge on credit cards. Not one -Company but Pretty Much all Companies Want their cards used and then they charge the Dealers". There isn't that Much Margin With the competative Prices up and Down the Road to just keep giving this Profit away.

Signed LR Marron
Company MARRON'S SERVICE
Address BOX 188
City, State, Zip NEWCASTLE
NEBR 68757

Please return to: Nebraska Petroleum Marketers, Inc.
1320 J Street, Lincoln, Ne 68508
NO LATER THAN November 16th.

PROBLEMS FACING YOU AS A JOBBER OR WHAT IS YOUR MARKET SITUATION?

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Please feel free to describe any problems that you have with a particular supplier. And, if possible, send documentation.

The Credit Card Surcharges are The worst Thing in our B[illegible] AS we Feel we can not Chg More per gallon in our Area so This cost us About 4¢ A gallon

IT Must be putting Money in The oil Co. pockets As we have received word That Mobil is going To Start Accepting All Credit Cards.

Signed: Nils J. Nelson
Company Nelson oil co
Address Box 26
City, State, Zip Valparaiso, Neb
68065

PHILLIPS 66
NELSON OIL COMPANY
711 F Street
Phone 759-4181
GENEVA, NEBRASKA 68361

11-12-82

George,

In regards to your questions of, a). Credit Card Surcharges, b) Loss of Normal business practices, c) predatory pricing, d) discriminatory price and Allocation practices,. I have the following comments.

a). In most all of our instances the Credit Card Surcharge has hurt our stations business. Depends on how each individual dealer has handled the situation.

B). Loss of Normal business practices – I do not fully understand what kind of information you want here. ______

c). Predatory pricing – ? By whom, my supplier or my own competitors. It is very difficult to compete with broker fuel. To the best of my knowledge on gasoline, the brokers are 2¢ → 3½¢/gal cheaper than my major suppliers (Phillips + Mobil). One has to try his best to compete, (which means lower your margin), by maintaining allegiance to your major supplier or run the risk of buying broker fuel and then your allocation becomes less the following year from your major supplier. (Allocations are based on previous 12 months purchases) Believe it or not I try very hard to buy all my product from my major suppliers.

D). George, if all this information is supposed to be directed at suppliers my following comments do not apply. However, your questionnaire asked for Problems facing you as a Jobber or what is your Market Situation. Over Please →

As a small rural jobber my competition is not only the other rural jobbers but large jobbers from the bigger cities. This pertains to gasoline, diesel fuel, oils, grease, filters, etc...... It is, in my opinion, becoming very difficult to compete with the larger business people. Perhaps the fault lies within myself and the respect goes to the larger business. I do not know.

I do know that competition is what makes the world go around and that's great. I just do not know what the future holds for me as a small rural jobber. I guess I will just keep trying and seek out different avenues in order to improve my own business.

Dick Nelson -
Nelson Petro. Co
Box 404
Geneva, Nebr. 68361

P.S. - Concerning allocation: My allocation is based previous 12 months purchases: As a rural jobber that presents problem. For instance this year our irrigation season was only for 30 days. (July 20 → Aug 20). Therefore my purchases were down for June, most of July, and 10 days in August. Therefore, next year if those months are dry and diesel is "short" !??? I will have definite problem in securing the product. This has happened before. The only way to counteract this is to keep tanks absolutely full to compensate for the lack of sales. We are not in a financial position to keep that much fuel on hand all the time and pay the interest. Hence a investment for me just to protect myself.

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1320 J Street, Lincoln, Ne 68508
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Predatory Pricing coupled with a supplier who makes vailed threats about buying his product and yet makes only a token effort at being ompetitive in the market.

It is really difficult, when you are losing as much money as we are, to be loyal to a supplier who ppears to have no willingness to be competitive.

Phillips has taken on new business which they just cannot upply, so they keep prices high to weed out the weak ones nd the weak ones are in small communities. ~~[illegible]~~ mall jobbers don't have large numbers of stations to pick up lack when some are down. Large companies come to smaller owns, sell low priced gas -- Phillips gets their price for lack f enough supply to take are of all their new business nd small jobbers die.

Signed: John R. Lohr
Company LOHR Petroleum Co.
Address 2401 13th St.
City, State, Zip Columbus, Nebr. 68601

Please return to: Nebraska Petroleum Marketers, Inc.
1320 J Street, Lincoln, Ne 68508
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Please feel free to describe any problems that you have with a particular supplier. And, if possible, send documentation.

SURCHARGES HAVE IN EFFECT LOWERED DEALER
MARGINS BY 3-4¢ PER GALLON. IF THE OIL
COMPANY CAN CHARGE FOR USE OF CREDIT CARD
THE DEALER SHOULD BE ABLE TO PASS THAT
CHARGE ON TO THE CARD USER. THAT IS A
PROBLEM THAT MUST BE RESOLVED WITH FTC.

MOBIL GAVE ITS DISTRIBUTORS 10DAYS NOTICE
(MAXIMUM) ON ITS "CASH DISCOUNT" PROGRAM. WE
KNEW OF THE 3% FEE 10 DAYS BEFORE IT
WENT INTO EFFECT.

IT APPEARS TO US THAT KANEB PIPELINE CO
PLAYED A LITTLE SHELL GAME THIS YEAR WITH
FUEL' THEIR NEW PIPELINE TO GENEVA IS
TO SUPPORT THE NORTH PLATTE AREA - THAT RESULTED
IN SEVERAL PERIODS
OF OUTAGES THAT
MAY HAVE COST
US A LOT OF
MONEY.

Signed:
Company: GALYEN PETRO Co
Address: BOX 309
City, State, Zip: ATKINSON NE 68713

Please return to: Nebraska Petroleum Marketers, Inc.
1320 J Street, Lincoln, Ne 68508
NO LATER THAN November 16th.

PROBLEMS FACING YOU AS A JOBBER OR WHAT IS YOUR MARKET SITUATION?

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Please feel free to describe any problems that you have with a particular supplier. And, if possible, send documentation.

We Would Like To See Divorcement. The refiners who are Also The retailers Have an unfair Advantage over Jobber Supplied, Dealer operated STATIONS

Signed: Saunders
Company: Saunders oil
Address: Box 1456
City, State, Zip: Sioux City
Iowa

Please return to: Nebraska Petroleum Marketers, Inc.
1320 J Street, Lincoln, Ne 68508
NO LATER THAN November 16th.

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Please describe or list and explain any market problems facing you, such as; credit card surcharges, loss of normal business practices, predatory pricing, discriminatory price and allocation policies, etc.

Please feel free to describe any problems that you have with a particular supplier. And, if possible, send documentation.

I think the practice of major oil companys dumping there excess galons on the market at discount prices to retailers + brokers is unfair to us retailers who are locked in to a major supplier. We cannot compet fairly at the pumps.

Signed: Earl W. Ferguson
Company Farmers Co-op Oil Co
Address
City, State, Zip Nelson Nebr
68961

STATEMENT FOR CONGRESSIONAL HEARING ON MARKETING PRACTICES

NORTH CAROLINA

TYPE OF MARKET. On the whole North Carolina would be considered more of a rural and surburban state than urban; however there are several semi-metropolitan areas with population of the city or town and its environs exceeding 200,000 persons. The state has a unique characteristic called the "Piedmont Crescent" - which describes a more or less 12 county area starting in Gastonia-Charlotte area and swinging around Interstate 85 to Greensboro and Durham and then highway 70 to Raleigh. This area has 50% or more of the population of the state, 50% of the wealth, 50% of goods and services and about 50% of everything except land mass. There are 100 counties in the state.

The following major oil or terminal suppliers serve the various jobbers in North Carolina: American Petrofina Marketing, Inc., Amoco Oil Company, Cities Service Company, Colonial Oil Industries, Inc., Crown Central Petroleum Corp., GNC Energy Corp., Gulf Oil Company, Marathon Oil Company, Mobil Oil Corp., Onco Oil Company, Phillips Petroleum Company, Shell Oil Company, Sun Refinery Marketing, Tenneco Oil Company, Texaco USA, Exxon Company, U.S.A., Texas City Refining, Inc. and Union Oil Company.

MEMBERSHIP OF THE NORTH CAROLINA OIL JOBBERS ASSOCIATION. Attached is a profile of the average jobber in North Carolina based on most recent survey. Briefly, such jobber sells 3,349,242 gallons of motor fuel annually and 1,529,817 gallons of distillates. He will employ 10.2 persons and operate 7.9 vehicles. Of the 620 members of the North Carolina Oil Jobbers Association, approximately 293 sell less than 2 million gallons of light products annually (gasoline and distillate). The typical jobber serves 15.3 retail motor fuel outlets. It is estimated the NCOJA members sell or control the selling of 60% of the motor fuel in the state and 95% of heating fuels.

In the past few years we have lost 25 members per annum through business failure, buyouts, sellouts, mergers, consolidations, etc. Our projection is that this trend will continue for the next few years. The continuous reduction in gasoline and other motor fuel consumption, together with strong competition from natural gas against heating fuels - coupled with many of the problems explained below, will have an impact on the jobbers' survival.

PROBLEMS FACING THE MEMBERSHIP OR MARKET SITUATION. Some of the chief concerns of oil marketers in North Carolina are: CASH FLOW, CREDIT PRACTICES OF SUPPLIERS, PROFITABILITY DUE TO LOW OFFERINGS IN THE MARKETPLACE, INFLATION AND INCREASED COSTS, RAIDING OF COMMERCIAL ACCOUNTS BY SUPPLIERS (BELOW JOBBERS COST), CONTINUED AGGRESSIVENESS BY NATURAL GAS COMPANIES AND ELECTRIC POWER UTILITIES TRYING TO CAPTURE AND CONTROL THE RESIDENTIAL HEATING MARKET. If one word could summarize the jobbers plight at present in our state it would be "FEAR" - by this we mean the jobbers' fear that he will be unable to survive in the future - more details below.

CASH FLOW - Due to inflation, mounting operating costs such as salaries, etc., coupled with higher inventory costs and a slower turnover of product - have all caused serious cash flow problems for marketers.

CREDIT PRACTICES OF SUPPLIERS - The cash flow situation is compounded by the change in credit practices by most of the suppliers. There has been a tightening of the noose around the jobbers credit belt - suppliers requiring faster payments, less discounts, eliminating summerfill and deferred billing programs, etc. Some suppliers have even required jobbers to take checks to the terminal at the time of purchase - even though the jobber has good credit rating.

CREDIT PROCESSING FEE AND CASH DISCOUNTS - Many of the major oil companies have imposed a processing fee on credit card ticket (batches) handled by jobbers - with the fee running usually about 3%. Many of the suppliers have instituted Discount for Cash programs at their own outlets and have encouraged jobbers to follow the same practice to overcome the cost of the processing fee. Many jobbers have been unsuccessful in trying to cope with the Discount for Cash program - due to this particular mode of operation at retail outlets. They have had to absorb a great part of such processing fee - being unable in the marketplace to cover the cost of such fee in their price adjustments. Other jobbers who have imposed the discount for cash program have had a loss of business and have had difficulties in customer relations. The jobbers in North Carolina feel that the suppliers should be prohibited from charging such fee and/or the Federal law should allow jobbers to add a separate charge for credit at retail. Most N.C. marketers feel the suppliers did not adequately research the situation or get input from jobbers on the practicalities of such a program prior to instituting it. It was take it or leave us.

TERMINAL PRICING - Typical of suppliers' more stringent policies is the trend toward terminal pricing. Many suppliers have adopted this new concept in their contractual philosophy; and it has eliminated the historical "hauling allowance" of most jobbers. Even when the supplier reduces the price to compensate for part of the loss of the freight allowance, the supplier's subsequent price adjustments can be suspect. The reduction (lower adjustment) for freight loss may be a "ghost" and may vanish at the supplier's whim.

(UN)PROFITABILITY DUE TO LOW OFFERINGS IN THE MARKETPLACE - The law of supply and demand seems to be wreaking havoc on retail offerings. A so-called glut of supply is forcing low prices with poor margins. The recent studies by Dr. Philip Cooley for Petroleum Marketing Education Foundation reveal the trend to lower profits for oil wholesalers. Direct operations of some suppliers have had some adverse effect, too. The return on investment for most jobbers is at or near an uneconomic level - and no immediate signs of improvement.

RAIDING OF COMMERCIAL ACCOUNTS - Has been a thorn in the flesh of jobbers for three or more decades. Of late it seems more pronounced and the price offerings to some of the commercial accounts are so low that competing jobbers can't even come close. It seems that the suppliers can subsidize such offerings and use the argument "meeting competition" to justify their actions. The problem is that someone has to lead off in the offerings at ridiculously low levels initially.

AGGRESSIVENESS OF UTILITIES - The natural gas and electric utilities in our state have a constant, aggressive program in operation - aimed at the fuel oil residential user. In the past three years natural gas has converted thousands of homes in North Carolina and the power companies have converted some but have had a greater impact on new homes because of their advantages with the heat pump. Fortunately the trend is slowing and the rate or percentage of change is dropping - but the low prices of utilities certainly are unfair to the heating fuel dealer who is not guaranteed a rate of return on his operation. Some of the advertising and tactics of the natural gas companies should also be questioned.

FEAR - In our state there is an aura of uncertainty - the suppliers' attitudes have taken 180 degree turn in the past couple of years - in most cases. Jobbers continue to fear some supplier's pull-out of our area based on their withdrawal from other nearby markets. The biggest impact and ominous action by suppliers is their seemingly lack of concern. The rapport suppliers have had with jobbers for many years seems to be abandoned with unemotional announcements. The attitude seems to be "to hell with jobbers, we can do without you". Some of the suppliers will say publicly that the jobbers are a viable portion of their business and that they will continue to be so - but privately some will tell the jobbers that if they are unhappy or don't like what's happening to them to look elsewhere for another supplier.

In summary, the jobbers in North Carolina have many dilemmas - and all seem to be playing a role as to their outlook. At present it is anything but optimistic.

* *

Loren Tompkins, President
Dan Waddell, NOJC Director
Don Ward, Executive Vice President

November 10, 1982

JOBBER-MARKETER PROFILE
NORTH CAROLINA OIL JOBBERS ASSOCIATION

Number of oil wholesaler members, less than 1 million gal. annually	180
Number of oil wholesaler members, 1-2 million gal. annually	113
Number of oil wholesaler members, 2-5 million gal. annually	230
Number of oil wholesaler members, 5-10 million gal. annually	67
Number of oil wholesaler members, over 10 million gal. annually	27
Average gasoline gallons sold per firm annually	3,349,242
Average distillate gallons per member firm annually	1,529,817
Average number of motor vehicles operated per firm	7.9
Average number of fulltime employees per firm	10.2
Average number of motor fuel outlets served	15.3
Average number of years in business (owners)	17.8
Number member firms handling LP Gas	75
Percent of members serving in local or state government elected office	11%
Percentage of members serving as bank directors	14%
Quasi Judicial (school, zoning, hospital boards, etc.)	17%

11-82

Phil

The Current Ohio Petroleum Market

Market

The Ohio petroleum market as measured by annual taxable motor fuel sales shrunk by 10.5% between 1979 (6,100,430,459 gallons) and 1981 (5,455,576,205 gallons). It continues to shrink at slightly over 5% during 1982. The market is roughly split into thirds: One-third, SOHIO; one-third, Marathon, Ashland, and other refiners; one-third independent jobbers.

State Association

The Ohio Petroleum Marketers Association represents the independent jobbers and marketers. Currently there are 400-plus licensed jobbers in Ohio, including all market sectors. Among the independents nearly 100 have been lost in the last 24-months via mergers, acquisitions or bankruptcy. Association membership has eroded in like rates. The major oil companies are also pulling out of the Ohio market including Arco, Exxon and Texaco in the last twelve months.

Market Problems

The market problems in Ohio are sixfold:

*Shrinking market

*Supply glut

*Predatory pricing by majors direct operations

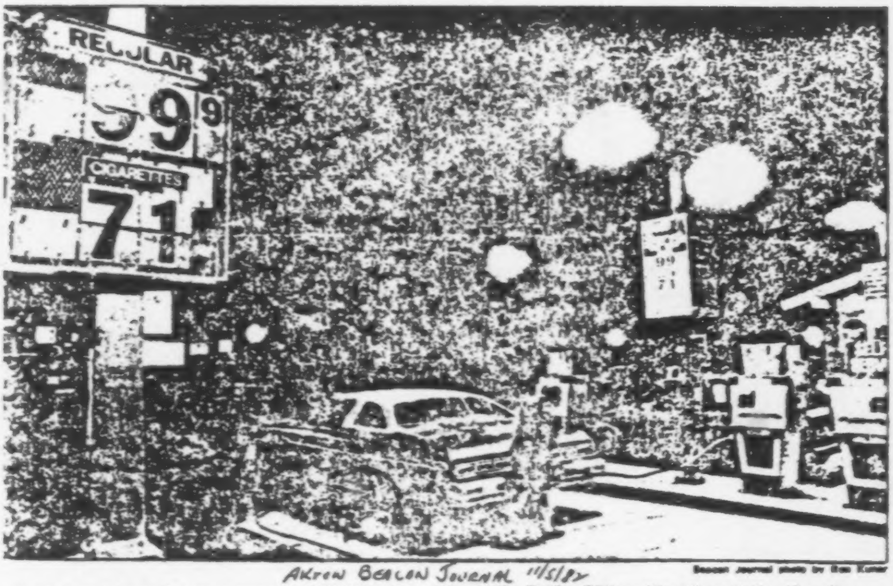
*Credit-cash war (discounts at retail and credit extensions to commercial accounts)

*Refineries increasing market shares by direct operations

*Advancing C-store marketing.

All of the above contributes to pricing competition which occasionally results in below-cost pump pricing. What obviously is needed is a floor under prices which allows all market sectors to at least recover the costs of doing business. At this point neither divorcement nor divestiture will solve the independent jobbers' "marginless" market problem in Ohio.

Ronald Schilke, President, OPMA
Roger F. Dreyer, Executive V.P., OPMA
Sam Stipp, NOJC Director



AKRON BEACON JOURNAL 11/5/82

Beacon Journal photo by [illegible]

It was worth pumping your own gas at 99.9 cents a gallon at the Belden Village Marathon station Tuesday

Motorists line up for 99.9-cent gas

By Dave Scott
Beacon Journal staff writer

Gasoline for almost $1 a gallon, once sidered the ultimate in excessive fuel t, was worth waiting in line for Tuesday Jackson Township.

Frank Tan, the new owner of a Marathon tion on Everhard Road across from Bel- n Village mall, decided the best way to mote his business and compete with a hio station next door was to cut his price regular gasoline from $1.169 a gallon to 9 cents.

Prices were posted at 11 a.m. Within a minutes, he had more than a dozen torists in line waiting to fill up.

On a normal day, Tan said he sells about 600 gallons of regular leaded. He sold more than 3,000 gallons Tuesday.

"I was looking for something to do for my grand opening," he said.

Glenn Hershberger said he hadn't bought gasoline for less than $1 a gallon in more than two years and was taking advantage of the price by filling up both tanks on his large pickup truck.

Tan said he has been in a price war with the Sohio station since he opened a month ago.

He said the two stations have been juggling the price for regular between $1.119 and $1.179 per gallon with the Marathon station usually 1 cent higher.

On Tuesday, he decided to set a price so low the Sohio station couldn't possibly compete.

He was right. Joe Helaney, manager of the Sohio station, kept his price at $1.15 a gallon for regular.

Helaney denied engaging in a price war with Tan, arguing that Sohio officials set his price based on competition at several area stations.

And Tan admitted that he could not compete with Sohio's prices as an independent owner.

But he said bargain hunters who use unleaded gasoline should keep an eye open. He plans a sale on those brands later.

He conceded the price will be more than a dollar.

OKLAHOMA
OIL MARKETERS ASSOCIATION
5115 N. Western • Oklahoma City, OK 73118
• (405) 842-6625 •
OOMA

NOJC TESTIMONY
Supplier Relations

Oklahoma is a mixture of urban, suburban and rural markets for petroleum products. About half our 3 million people live in one of our major cities---Oklahoma City, Tulsa or Lawton, about 25% could be termed suburban and the remaining rural. Our state has a good mix of employment from agriculture, manufacturing and mining, principally petroleum, industries. As a sun belt state, we have seen a steady growth in recent years, and we were one of only a handful of states which had an increase in gasoline volumes last year over the previous year.

Major suppliers in Oklahoma include Texaco, Phillips, Gulf, Sun, Champlin and Kerr-McGee which among them make up about half our market. Others include Exxon, Getty, Conoco, Mobil and Fina. We do not have any marketing in Oklahoma by Shell, Arco, Amoco (which pulled out this year) Chevron or Sohio.

Oil jobbers in Oklahoma are small businesses with employment probably averaging under five. About 300 are members of our association and we estimate that there are another 100 or so that could be members. Our state law prohibits distribution of any state tax data but we estimate that our members enjoy about 50% of the market. Our membership directory lists more than 90% of our members as branded jobbers although many have some unbranded outlets.

During 1982, our membership is off only slightly ... about 5%. We have seen several marketers forced into bankruptcy during the past year with several others suggesting that that may be their only solution if conditions do not improve soon. Several smaller marketers have been purchased by larger companies, a trend which we expect will continue.

Specifically, the most serious problems facing our membership are in the metropolitan areas where majors are marketing through their own outlets at prices which often are near or even below jobber costs. Few of these problems are unique to Oklahoma but specifically they include:

- Texaco dealers are receiving a 4¢ per gallon rebate on the first 50% of their allocations and another 1½¢ per gallon on all sales after 100% of allocation for the month is reached.
- In Tulsa, Sun is selling dealers at less than jobber's price, even after the 1% prompt payment discount is considered.
- Sun pays rent to their dealers who own their own facilities (2¢ per gallon) while jobbers are denied that advantage.

- Oklahoma Refining Co. last month bid directly for business formerly handled by its jobber at the jobber's buying price.
- Getty is restrictive to the point of virtually denying its brand to its jobber-owned outlets.
- Sun has speeded up its billing procedures to the point that most of its jobbers are having difficulty meeting their discounts. In several individual instances, the check was due the day the jobber received his invoice.
- Texaco is selling commercial end users at 4½¢ less than jobber price.

Hauling allowances have now been virtually eliminated from Oklahoma. Formerly a standard practice used to attempt to equalize competitive situations, this "normal business practice" has all but disappeared.

Numerous members have complained about being underbid by their own suppliers on commercial business. Yet, suppliers often return to those same jobbers and seek special sevices for the account the jobber lost.

John Mc Carthy, President

Heard Broadrick, Director

Larry Brainard, Executive Vice Pres.

Oregon Oil Jobbers Association

3130 S.W. Ridgewood Road
Portland, Oregon 97225
(503) 292-1495

November 19, 1982

TYPE OF MARKET

Urban, suburban and rural.

Twelve suppliers include: Arco, Chevron, Mobil, Shell, Texaco, Exxon, Union, Tosco, PRI Northwest, Aminoil, Time Oil and Golden Eagle Refining.

MEMBERSHIP OF STATE ASSOCIATION

103 Jobber and Supplier Members. A few are large, a number are of medium size and about half are small. Some jobbers are branded and some are unbranded. Some are retail, some are farm and commercial, and some jobbers a combination of these. Products marketed include gasoline, distillate, motor oils and grease. We anticipate possible losses of membership during 1983 due to factors described in the following section.

PROBLEMS FACING MEMBERSHIP OR MARKET SITUATION

The present economy of Oregon.
Predatory pricing.
Elimination or reduction of hauling allowances.
Pricing practices (discriminatory - including rents & rebates)
Allocation policies.
Credit terms.
Credit availability.
Higher interest rates.
Credit card surcharges.
*Lack of lead time to adjust to new situations.
*Arbitrary definition of classes of trade adversely affecting jobbers.

NAMES

President: John A. Carson, Carson Oil Co., Inc., Portland
NOJC Director: John C. Todd, Truax Corporation, Corvallis
State Ass'n Executive: Bob Kupfer, Oregon Oil Jobbers Ass'n

*Some suppliers make conditions more difficult by not taking jobbers into consideration on these two items.

OFFICERS

President
JOHN A. CARSON
Carson Oil Co., Inc

Vice President
DON LIDTKE
Service Oil Co

Secretary-Treasurer
HOWARD W. THOMAS
Collins Oil Company

DIRECTORS

NOJC Director
JOHN C. TODD
Truax Corporation

DAVID L. HARRIS
Harris Enterprises, Inc

MIKE HAWKINS
Hawk Oil Company

LEE POWELL, SR
Powell Distributing Co. Inc

. . .

NOJC Vice President
Western Region
RICHARD HARRIS
Harris Enterprises, Inc

. . .

Executive Vice President
BOB KUPFER

Pennsylvania Petroleum Association
(717) 233-5838 BLDG. 2, SUITE D / 2101 N. FRONT STREET / HARRISBURG, PENNSYLVANIA 17110-108
REPRESENTING LOCAL HOME HEATING OIL AND GASOLINE DISTRIBUTORS

The petroleum products market in Pennsylvania is a combination of large urban, medium urban, suburban and rural areas. The State is supplied by American Refining, Ashland, Atlantic-Richfield, British Petroleum, Boron, Chevron, Citgo, Exxon, Getty, Gulf, Hess, Mobil, Phillips, Shell, Sunoco, Tenneco, Texaco, United Refining and various smaller pipeline terminals and refiners such as Kendall, Quaker State and Wolf's Head.

The membership of the Association is comprised of 550 Petroleum Distributors who handle gasoline, home heating oil, diesel fuel, kerosene, lubricating oil and LP gas. Our average member markets 3 to 5 million gallons of refined product annually. About 90 percent of the home heating oil and 45 per cent of the gasoline sold in the State is handled by our members. Most gasoline outlets are branded, although there are some private branded stations throughout the State. We estimate that our members employ approximately 6,000 people. We have lost approximately 30 members per year over the past four years. This attrition is expected to continue as long as demand for petroleum products continues to decline.

Some of the problems facing our members are:

- Credit Card Surcharges, coupled with unrealistic federal procedures for posting and collecting cash/credit card sales.
- Loss of normal business practices such as prompt payment discounts, freight allowances, unrealistically shortened payment requirements, and arbitrary setting of credit lines.
- Pricing policies which create rack prices to distributors which are higher than delivered prices to directly supplied stations.
- Allocation policies which restrict supply to distributors but not to direct dealers.
- Pricing allowances or rebates to direct dealers but not to distributors, thus effectively pricing distributor-supplied dealers out of competition.
- Requiring distributors to use terminals located at some distance from usual lifting point, while not restricting direct liftings from the same terminal.
- Solicitation of distributor accounts, both service station and commercial consumer, at prices below distributor cost.
- Cancellation of Supply Contracts due to failure to meet minimum contract liftings, where the cause of underlifting is beyond the distributor's control. Examples might be terminal closing, unavailability of product at the terminal or uncompetitive price of product.

PRESIDENT John A. Arnold
FIRST VICE PRESIDENT John L. McDowell
SECOND VICE PRESIDENT Alan R. Guffman
SECRETARY E. B. Heine
TREASURER Gerald E. Troutman
EXECUTIVE VICE PRESIDENT John P. Zinkand

DIRECTORS

Thomas P. Bredigan, Kittanning
Eugene H. Charlton, Penndel
John A. Glass, Reading
Edward J. Kraus, Du Bois
M. David Morcatoris, Jr., Meadville
Frank R. Orloski, Wilkes-Barre
Terrence L. Walton, Lansdale
William F. Campbell, Jr., New Wilmington
David T. Cummings, Mansfield
John R. Higinbotham, Smock
John Luciano, Philadelphia
Alan L. Miller, Somerset
Robert G. Salathe, Jr., Everett
J. F. Waybrant, Gettysburg
Carl G. Cassel, Palmyra
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Glenn H. Hiller, Jersey Shore
Douglas Martin, Wysox
Robert W. Obetz, Manheim
Charles W. Sheller, West Chester
James Yeager, Allentown

EX OFFICIO & NOJC DIRECTOR
Charles T. Nevins
Narberth

RHODE ISLAND GASOLINE MARKET

By: Wilfred H. Hall
Independent Oilmen's
Association of NE
10 Vaughan Mall
Portsmouth, NH 03801

Size and Makeup of Market

Rhode Island consumes 381 million gallons of gasoline per year.

This fuel is distributed by 10 major oil companies and 30 independents, (see exhibit #1). Majors sell almost 70% of the gasoline sold in the state and have more or less sold this % for each of the last five years. This in marked contrast with more rural states, like New Hampshire and Maine, where majors share of market has decreased in recent years.

Due to the urban nature and size of the state, major oil companies find Rhode Island an attractive market (albeit less attractive since recent passage of petroleum taxes). The High density of population near dockside terminals makes this an attractive market for major oil company exploitation.

Arco is a case in point. Using the Alaskan crude windfall profit exemption, it appears Arco is using this advantage (along with a legitimate reduction in costs, due to dropping credit cards) to decimate margins in the state and make the going extremely difficult for other refiners and independents to compete. Refiners are able to cushion their losses in gallonage and profit with sales in other parts of the USA, but independents have no such option and many will fail unless the situation is corrected. Arco's share of market has increased from 10.1% in 1981 to 14.2% in 1982.

Retail Outlets

The number of retail gasoline outlets in Rhode Island has diminished as follows:

1975	816	
1978	650	
1979	625	
1980	559	(See Exhibit #1)

This has come about because of the following factors:

1. Reduction in gasoline demand (smaller, lighter cars).
2. Changing consumer buyer habits to use:
   a. self service
   b. C-store gasoline combinations
3. Inflation increasing station costs.

4. Higher gasoline casts requiring more capital to operate a station.
5. Less consumer need for services offered by older bay stations.
6. Pressure from major oil company direct marketing stations which lowered operating margins at retail.

Supply

As mentioned earlier, most gasoline coming into Rhode Island comes by ship or barge into the Providence general area. Most of this is in the hands of integrated refiners.

Exhibit #1

GASOLINE CONSUMPTION

(000 gals)

STATE	1980	1975	1970
ME	517,014	536,051	471,242
NH	411,214	403,324	348,120
VT	238,842	240,272	214,810
MASS	2,301,675	2,313,488	2,085,513
RI	381,826	388,108	346,075
Totals	112,628,554		

# SERVICE STATIONS

# of Units

	1980	1979	1978	1975
ME	804	838	871	1,262
NH	606	632	657	888
VT	464	484	503	616
MASS	3,341	3,484	3,622	4,306
RI	559	625	650	816
Total US	146,523		216,509	

Source, NPN Fact Books

Exhibit #2

RHODE ISLAND GASOLINE SALES

(in ooo of gallons)

	June 1978	June 1979	March-June '1982
Amoco	788	775	2,393
Arco	3,806	3,416	16,894
Exxon	2,533	2,503	5,030
Getty	1,696	1,767	4,921
Gulf	3,028	3,033	8,111
Hess, etc.	1,607	1,691	4,901
Mobil	3,471	3,255	9,284
Shell	3,602	3,182	10,815
Sun	3,972	3,309	16,783
Texaco	1,480	1,294	4,044
Subtotal	25,983	24,225	83,139
Total Sold in state	35,747	33,711	119,057
% sold by majors	72.6%	71.8%	69.8%
Sold by others			
# Non majors	30		
# Majors	10		
Arco share	10.6	10.1	14.2

Source: State Tax Records

scoja
South Carolina Oil Jobbers Association

November 12, 1982

MEMBERSHIP

The South Carolina Oil Jobbers Association is a trade association representing 270 small-business petroleum marketers in the State. The membership is engaged in the wholesale and retail distribution of branded and unbranded petroleum products - both gasoline and home heating oil. Collectively, they handle a little more than half of the gasoline sold in the State, and more than 85% of the residential heating oil. They are small business firms in every sense of the word - averaging only eleven employees. They are family-owned businesses - some now in the second and third generations.

Our members are supplied by more than 23 refiners and importers - among them American Petrofina, Amoco, Beaumont Oil, Belcher, Chevron, Cities Service, Colonial Oil, Exxon, Gulf, Hess, Kendall, Koch Fuels, Marathon, Mobil, Phillips, Shell, Superior Gas & Chemical, Tenneco, Texaco, Texas City, Union and USA Rookwood. Product enters the State by pipeline, tanker and highway - no petroleum products are produced in the State.

Our members operate or have supply agreements with more than 90% of the 4540 retail gasoline outlets in the State. These include full-service stations, split-island stations, self-service outlets, convenience stores and the traditional mom-and-pop rural grocery stores. The jobber serves primarily the secondary and rural markets, as well as a large share of the commercial and industrial market. The agricultural market is heavily dependent on the jobber for supply of petroleum products, delivered from an inventory maintained in the immediate vicinity.

Although our membership has remained fairly constant in recent years, attrition in the form of bankruptcies and forced mergers has taken its toll. In the last two years, more than 35 have dropped from our rolls, replaced by similar firms seeking the assistance of the Association to stay in business.

MARKET SITUATION

In the last two years, the jobber segment of the industry has suffered under pressures from three directions - decreasing margins in a surplus market, increasing costs thrust upon them by their own suppliers, and the general inflation plaguing the entire economy. Costs shifted from the suppliers to the jobbers include credit card charges which cannot be passed on to the consumer, the loss of freight allowances, changes in credit policies, merchandising costs such as signs, painting, training, and the financing of facilities. The pressures from decreasing margins is exacerbated by disciminatory pricing of the suppliers to their own directly-supplied outlets as opposed to the jobber's buying price. The jobber's own outlets and those dealers he supplies cannot compete in a market which is set by the low-priced,

1809 Gadsden Street / Box 64 / Columbia, South Carolina 29202 / (803 765-9570

high-volume, major-supplied outlets.

The upward pressures on the jobber's buying price and the downward pressures brought about at retail by a highly competitive market have reduced the so-called jobber margin below the survival point.

While such tactics differ from company to company, they may generally be attributed to all companies which sell both dealers and jobbers directly. The exceptions are rare.

We do not believe there is a conscious effort on the part of most majors to eliminate the jobber segment, although here, too, there are exceptions. Rather, we believe we are witnessing a callous attempt on the part of the major oil companies and other suppliers to solve their own financial problems at the expense of the small-business segment of the industry.

The elimination of the jobber segment will leave a vacuum in the petroleum supply picture to commercial and agricultural users, as well as to the millions of motorists who live away from the metropolitan areas. At the very best, these customers may expect higher prices if the small-business segment is eliminated. If the major oil companies could serve this type of market efficiently, they would have done so long ago. Their inability to do so gave rise to the jobber segment in the first place, and their closeness to their customers and their efficiency in serving secondary and rural markets has made them an essential part of the petroleum distribution system.

EARLE ATKINSON, JR.
President

BEN WILLARD
NOJC Director

DICK deMONTMOLLIN
Executive Director

South Carolina Oil Jobbers Association
P. O. Box 64
Columbia, SC 29202

November 12, 1982

T.O.M.A.
Tennessee Oil Marketers Association
430 ENOS REED DRIVE, P. O. BOX 23256, NASHVILLE, TENN. 37202
ELIZABETH WALKER, Executive Director

STATEMENT ON MARKETING PRACTICES IN TENNESSEE

Tennessee is a long narrow state, is urban, rural and suburban, having four (4) large cities, Memphis, Nashville, Knoxville, Chattanooga and, the Tri Cities area comprised of Bristol, Kingsport, Johnson City. There are a large number of small cities as well as suburban towns, example, Franklin, twenty(20) miles from Nashville. Our membership however, is primarily rural, we do have jobbers in each of the larger areas.

Suppliers operating in Tennessee are: Exxon, Gulf, Mobil, Citgo, Texaco, Fina, Phillips 66, Union 76, Amoco, Sinclair, Delta, Kayo, Tenneco, Chevron, Ashland, Tosco, Triangle, Shell, Publix.

The Tennessee Oil Marketers Association has 194 jobber members. Of this 194 members, 143 have a volume of five (5) million or less annually. 51 of this 194 members have a volume of 5 million and over. These volume figures are based on 1981 gallonage. We feel sure that when our volume figures for 1983 dues are received that volume for all of our members will be down dramatically.

During 1981 and 1982 we have lost 20 members, either by merger, sell out, closing doors and going out of business, or simply unable to pay minimum dues because of market conditions. We anticipate a further loss of jobber members in 1983, as some are hanging on now by the very hardest!

PROBLEMS FACING MEMBERSHIP:
Credit card charges;
Removal of freight allowance with terminal (rack) pricing;
Now charged for all signs, poles and advertising material that used to be furnished at no charge;
Suppliers retailing at or below jobber buying price;
Extremely tight credit, example on 1%-10 days, postmark was previously accepted, now check must he received by 10th day;
Chain convenience stores using gasoline as a loss leader.

J. W. Cameron, Jr., President
W. D. Pettway, Jr., NOJC Director
Elizabeth Walker, Executive Director.
November 15, 1982

GASOLINE SALES IN VERMONT

By: Wilfred H. Hall
Independent Oilmen's
Association of NE
10 Vaughan Mall
Portsmouth, NH 03801

Market and Market Mix

About 238 million gallons of gasoline are sole in Vermont each year, according to state tax figures. (See exhibit #1.)

Since state excise tax figures are unavailable from the state showing who sells what, we can only speculate as to the sales breakout.

It is clear that 10 major refiners operate in the state. The last figures prior to termination of state statistics showed that there were 17 independents selling under 1 million gals gasoline/year and 22 selling over a million or 39 independent jobbers. In this year (1974) major refiners were selling 49% of product sold in the state. This compared with 51% in 1973 and 50% in 1972.* If Vermont follows statistical trends available in Maine and New Hampshire, independents probably will sell over half the gasoline sold in Vermont in 1982.

Retail Outlets

The number of retail gasoline outlets in Vermont has diminished as follows:

1975	616
1978	503
1979	484
1980	464

This has come about because of the following factors:

1. Reduction in gasoline demand (smaller, lighter cars).
2. Changing consumer buyer habits to use:
    a. self service
    b. C-store gasoline combinations
3. Inflation increasing station costs.
4. Higher gasoline costs requiring more capital to operate a station.
5. Less consumer need for services offered by older bay stations.
6. Pressure from major oil company direct marketing stations which lowered operating margins at retail.

Further attrition in number of operating units at retail is expected.

Margins

Major refiners appear to be using their upstream profits to subsidize their direct marketing operations at service station level and thereby leading margins of jobbers to historical low levels as a % of sales.

Majors have used various devices to squeeze independents including:

- Making them bear the costs of refiner credit cards (which by law cannot be passed on to customers).
- Utilizing the Alaskan windfall tax exclusion to lower retail prices at their own stations beneath any reasonable positioning a jobber might make.
- Shortening lines of credit to jobbers.
- Eliminating hauling allowances.

Arco's savings by not offering credit cards is likely in the 3¢ to 4¢ a gallon area (what other major refiners are charging for credit card services) yet their postings are often as much as below the market. This differential is thought to principally stem from the fact Arco's Alaskan crude is exempt by law from the windfall profits tax. In any case, Arco's pricing has been a significant factor in the deteriation of gasoline margins in Vermont.

Supply

Vermont gasoline comes from several sources. Some comes from Albany, and in the southern tier, much comes from Boston terminals, DRACUT or Hartford pipelines (one of which terminates in Holyoke, Mass.)

---

* Survey of Independent Oilmen's Association in 1974.

Exhibit #1

GASOLINE CONSUMPTION

(000 gals)

STATE	1980	1975	1970
ME	517,014	536,051	471,242
NH	411,214	403,324	348,120
VT	238,842	240,272	214,810
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# of Units

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VT	464	484	503	616
MASS	3,341	3,484	3,622	4,306
RI	559	625	650	816
Total US	146,523		216,509	

Source, NPN Fact Books

Virginia Petroleum Jobbers Association, Inc.

P. O. BOX 6344
2110 SPENCER ROAD
RICHMOND, VIRGINIA 23230

RECEIVED
NOV [illegible] 1982

The total population of Virginia is about 5½ million people. Approximately one-half of this population is in three urban areas, namely Northern Virginia, Richmond and Tidewater.

The total motor fuel sales in Virginia for 1981 amounted to 28 billion gallons, with some 2.5 billion gallons of gasoline and 350 million gallons of diesel.

The great majority of motor fuel is supplied to Virginia by some 15 major refiners, namely Amoco, Arco, BP, Citgo, Crown Central, Exxon, Gulf, Marathon, Mobil, Phillips, Shell, Sun, Tenneco, Texaco and Union Oil Co.

There are some 250 petroleum jobbers marketing motor fuel in Virginia and they supply approximately 2000 retail gasoline outlets and 98 percent of the farm business. This amounts to about 40% of the motor fuel sold in Virginia. The average jobber firm employs 12 to 15 people and sells 4 million gallons of gasoline and heating oil.

The great majority of our jobbers are branded and many of then also sell an unbranded product. Most of our jobbers are located in the smaller towns and serve the rural areas. We have very few jobbers in urban areas.

Some ten years ago, the average jobber margin was approximately 4 cents per gallon on motor fuel and the retailers had an average of 7 cents per gallon margin. The jobber also had a freight allowance, cooperative advertising, reasonable credit terms including a discount for payment within ten days, and other so called "fringe" benefits.

Today the jobber is operating on a very small margin, has no freight allowance, strict credit terms, surcharge for credit card business, high branded product prices compared to street prices, an oversupply of product with decreasing demand, high interest rates, and all of this coming at a time when the overall economic situation is bad. Without a doubt, the petroleum jobbers in Virginia are having a very difficult time making a profit and staying in business. Some twenty five of our jobbers have sold out in the past 18 months and more will sell out in the future. The problems in the marketplace in Virginia are the same as those in other areas of the country.

The President of our Association is George LeCuyer, the NOJC Director is C. B. White, and the Executive Director is E. D. Catterton.

E. D. Catterton
Executive Director

**WASHINGTON OIL
MARKETER'S
ASSOCIATION**

10540 VALMAY AVENUE NORTHWEST
SEATTLE, WASHINGTON 98177

November 18, 1982.

RECEIVED
NOV 23 1982

Phil Chisholm, Ex. Vice President
National Oil Jobbers Council
1707 H Street, N. W. 11th Floor
Washington, D. C. 20006

Dear Phil:

As you suggested this is a somewhat condensed resume' of some of the problems we are facing in the State of Washington, which have been aggravated by the national economy and which affect us so adversely in this area.

You may not have been aware the this states economy is bolstered by our forest products industry at all levels. The enormous increase in interest rates and the cumulative effect on the housing industry, with subsequent loss of employment, brought to a standstill the forest products business.

The general depression in air travel has had its impact on Boeing, curtailing sales of airplanes in both domestic and foreign lines and a decline in Boeing employment.

Our Sate is divided by the Cascade mountains, Eastern Washington in a large part, is agrarain but does have a significant forest products business. Agriculture is an important part of the economy in the entire state and Eastern Washington farm products to name two of great importance are apples and wheat farming.

Our Jobbers in Eastern Washington have continually faced the critical problem of accounts receivable with the farm trade and todays costs make credit granting a hazzard of extreme proportions. The high cost of money almost precludes any extended credit terms to farm or industry, with resulting customer public relations problems.

The Washington Oil Marketers' Association, is as you know, smaller than many of the other states because we have become active in only the last three years. As a trade association we are concerned with the problems our members face in taxes imposed on both gasolene and their total business by this state in the B & O Tax (Business and Occupation tax), which incidently by definition may not be passed on to the consumer.

Because of the tremendous increase in petroleum product prices we are paying some 700% more in dollars for this tax than we paid in 1973. If we had only kept pace with the Cost-of-Living increase we would be paying less than half of what we pay today. Most other business are on that reduced cost of tax payment.

Our markets volume-wise are probably about equally divided between branded and un-branded products and the future actions of Suppliers are bound to dictate substantial changes in market percentage.

The impact of worsening Jobber margins has had its effect on sales or consolidations among Jobbers and has increased the incidence of failure.

Our markets have been adversely influenced by the cessation of Arco in the credit card business and substantial squeeze on other marketers to meet the lower marketing levels resulting from this action.

Practically every Jobber and his service station outlets either operated direct or leased to an independent dealer are forced to meet this competition with substantial impact on the profits of the marketer, in some markets the profit is non-existant.

In broad perspective the discontinuance of historic hauling allowances to the Jobber and reduction in margin coupled with lower retail marketing levels at Supplier franchised outlets have made this business a disaster.

It is our position that the independent marketer who is and has been an important factor in the orderly distribution of petroleum products at all levels of sales is being forced into the position where in self defense he must consider espousing action to eliminate this unfair competion from the marketplace.

The current Officers of our Association are:

Shelby Blevins, President	Kelly Oil Co., Yakima, Wa.
Barney Yorkston, NOJC Rep.	Yorkston Oil Co., Bellingham, Wa.
Robert G. Elmslie, Ex. Dir.	10540 Valmay Ave. NW Seattle, Wa.

Robert G. Elmslie, Ex. Director.

OIL JOBBERS of WISCONSIN, INC.
An Association of Independent Petroleum Marketers

November 18, 1982

Mr. Phillip Chisholm
National Oil Jobbers Council
1701 H Street, N.W.
Washington, D.C. 20006

Dear Phil:

Wisconsin's petroleum market represents just about the broadest one might imagine. From the urban of Milwaukee to the small towns of the country and the many farms. Since Wisconsin marketers have held onto a higher percentage of the home heating business than most midwestern states, the marketers are widely diversified in terms of equipment (tankwagons for rural deliveries) and product mix. A disproportionate number of members carry a full range of petroleum and related products. This includes home heating fuels, gasoline, kerosene, diesel (for farm equipment as well as truck) LP and bulk products of all kinds.

Major suppliers to this market are the following:

Amoco - Marathon - Clark - Getty - Phillips - Koch - Kerr-McGee - Union 76 - Murphy

Mobil - Shell - Citgo - Cenex (Co-op) - Ashland - Conoco (Now pulling out)

Farmland Industries (Co-op) - Growmark (Co-op) - Land O' Lakes (Co-op) - and several independent non-refiner suppliers.

The membership of this Association includes approximately 397 petroleum marketers and suppliers to them. The number is approximated for the membership total changes almost daily as new members are added and others go out of business, merge or sell. Our membership has remained relatively constant over the past four or five years while the percentage representation has grown dramatically. Whereas five years ago our 400 members represented about 30% of all jobbers in the state, the present membership now represents nearly 60% of the total. The median size of the Wisconsin jobber is about five (5) employees, including the owner (and often other family members.).

(See attachment)

Nearly all the marketers carry more than one brand and/or purchase product from independent suppliers or brokers. This is done in order to remain competitive and to provide some assurance of supply as well as to relieve the uncertainties of dependence and the arbitrary policy changes of refiners.

Our membership represents about 50% of the gasoline marketed in the state and about 70% of the home heating oil. The membership represents about 80% of the jobber

P.O. Box 8518 • Madison, Wisconsin 53708 • (608) 221-4771

marketed volume of products, while the balance of 50% gasoline and 30% middle distillates is largely represented in direct marketing of refiners, major and independent.

While we have lost nearly 100 members over the past five (5) years, we have managed to enroll new ones in sufficient numbers to offset. This has expanded our overall representation as indicated above, but we see this ability declining as the potential shrinks. Our projections generally indicate a real membership in the range of 200 to 250 members in five to ten years.

Only three of these losses can be identified as resignations from dissatisfaction. The vast majority indicated "going out of business," or "sold," "purchased by..." Many of those who gave no reason we know resigned for one of the quoted reasons given. It should be remembered that some went out of business due to government regulations prior to deregulation.

The problems of the industry are legion, and if they were self-inflicted there would be no complaint. Unfortunately, the Wisconsin marketers are faced with horrible margins (as are most marketers today) but with some characteristics unique to the area they serve and the industry they represent. For instance, suppliers reduce or eliminate credit terms to their jobbers who, in turn, are unable to do so with regard to their customers. While the jobber may be purchasing his product on cash transfer or, at best, ten days cash it is absolutely impossible to deny the average customer, especially the farmers, thirty, sixty or other extended credit terms. It is obvious that such conditions affect not only the capital but also the cash flow position of the jobber. The result of continued tightening at one end of the credit chain coupled with the need for some flexibility at the other places the small and medium-sized jobber in jeopardy, while threatening the supply to rural and farm accounts.

Further, higher taxes, restrictive state and federal regulations and codes help to inflate the costs of operation while providing for no relief thereby adding to the erosion of the ability of the independent small business to compete and stay viable in the market place. Nor can the jobber expect any assistance from his supplier, the major and independent refiner, for most of the independent refiners subsidize their marketing operations with upstream profits to retail at prices at or below the buying price of the independent small business. In addition, most of the refiners compete for industrial and commercial accounts with prices below that which they sell to the jobber.

Credit card surcharge (cash discounts) serve the interest of the refiner only. Comparable discounts are not given to the marketer for his purchases, which means that much of the cost of the discounts are absorbed by the small business retailing direct to the customer. Even then, the price discounts are discriminatory in that advantages are given to the refiner-direct outlets.

The action of their own dealers in recent months should provide some insight into Amoco's great consumer discount program. Clark Oil has a tradition of marketing problems and is well noted for a constant effort to drive out independent competition. Ashland, through its SuperAmerica Stores, sells product at prices jobber competition cannot meet even if they are purchasing Ashland product. In general, however, Amoco and Mobil aside, the major refiners are not the problems in local competition. Most of them (Union, Phillips, Shell, Getty, etc...) work well with their small business marketers. That is not to say there are no problems, but they seem not so predatory in direct competition and more considerate of their small marketers function in the market place.

Although there is general recognition in the industry of the necessity for the regulations regarding spill containment, vapor controls, safety measures, insurance requirements, taxes for highway construction, maintenance and repair, etc... the consternation arises from the failure of our legislators to recognize the additional cost pressures these requirements bring to bear on the small business. The frustration factor grows and there seems to be no responsibility of the proposers of taxation and regulation to those who are directed to implement the directives and collect the funds.

We suggest that our condition could be eased somewhat in a very simple manner. For example, the extension of time between first date of collection to date of payment could be extended. (Taxes collected in January are due in March or 60 days between collection and payment.) The impact of such an extension would be once, at the beginning of the program, yet would substantially ease the pressures on marketers use of capital to pre-pay taxes for consumers, and it would enhance the cash flow of the business. Beyond the start-up delay, there would be little change in the total funds available to the State of federal government. Also, a percentage of the amount collected, say 5%, could be withheld by the marketer as a form of reimbursement for the expense or the collection. Strict audits and heavy fines could be established to assure compliance and to protect against fraud or abuse--but these systems are already in place.

Certainly the extension of tax payment deadlines and increased allowances for collection are self-serving, but they are not unfair or without precedent. The jobber is asking an extension of payment to compensate for that which he is forced to give his consumer accounts (and which government and commercial accounts take), and the collection allowance is simply reimbursement for services performed, as the business is required to pay its employees.

It seems important to point out that the small, independent petroleum marketer or jobber is a vital part of the petroleum distribution chain. He provides the competition which in turn provides the consumer's best protection against unconscionable profits. He provides the bulk of storage for refined product within the borders of the State of Wisconsin, especially in areas removed from refiner terminals--and refiner terminal storage is being reduced every year. It is this shortage of refined product, at great expense to the local jobber, which protects the consumer from immediate impact of shortages or distribution difficulties by providing sufficient short-term supply while alternatives are being sought. This is especially important to farm operations at certain seasons of the year. In many areas, the small, independent marketer is the sole promise of delivery, for the potential volume is not sufficiently great to be attractive as a market for the refiner. Much of the transportation of refiner product on an intra-state basis is dependent upon the small marketer who shuttles between large urban areas and small, lightly populated communities as a matter of course. Many of these routes would be unprofitable and, therefore, unserved if left to those who only haul, or to large faceless corporations insensitive to local interests.

Finally, the constant braying against the petroleum industry has contributed to the problem as well. It has developed in the consumer the belief that all segments of the industry are stealing from the consumer and this is untrue, certainly at the jobber level. It has created a false sense of benefit to be derived from artificially low prices which only serve to drive local competition out of business with the result that control of the market moves toward the large, distant corporations (super jobber or refiner) which are and will continue to be insensitive to local interests and will tend to become inflexible to local market conditions. And this doesn't begin to touch the factors of local taxes, purchasing of local goods and services, local employment, etc...

We have enclosed additional information which will contribution to difinition of the Wisconsin jobber.

Sincerely,

Raymond G. Karnes
Managing Director

RGK/nac

Enclosures

OIL JOBBERS OF WISCONSIN, INC. 397 Marketer Members

COMPANIES WITH:

Card/Keylock Operations	55	(14%)
Convenience Store (at least One)	98	(25%)
Beer License	59	(15%)
Liquor License	21	(5%)
Restaurant	19	(5%)
Car Wash	48	(12%)
Truck Stop	27	(7%)
Computer	87	(22%)
Sell/Install Furnaces & Burners	91	(23%)
Sell/Install Air Conditioning	39	(10%)
Sell/Install Heat Pumps	19	(5%)
Kerosene Space Heaters	16	(4%)
Sell Coal	10	(3%)
Sell Wood	11	(3%)
Sell AV Gas	28	(7%)
Sell Jet Fuel	10	(3%)
Market LP Gas	44	(11%)
Market Kerosene	80	(20%)
TBA	23	(6%)

Average number of employees per firm - 14, median number - 5

Average gallons of gasoline marketed annually - 3,267,000

Average gallons of diesel fuel marketed annually - 1,240,000

Average gallons of home heating fuel marketed annually - 1,446,000

Annual gallons of LP gas marketed annually - 674,000

Annual gallons of kerosene marketed annually - 106,000

82% have farm accounts.

West Virginia Oil Jobbers-Distributors Association
SUITE 808 ATLAS BUILDING
CHARLESTON, WEST VIRGINIA 25301
AREA CODE 304 343-5885

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RUSH A. KRODEL
POINT PLEASANT

November 22, 1982

TO: Phil Chisholm, Executive Vice President

FROM: David W. Haines, Executice Director

RE: Statement for Congressional Hearing on Marketing Practices

The following "Fact Sheet" outlines the market problems as they exist in West Virginia:

The average independent petroleum marketer in West Virginia is branded, has an average volume of 2.5 million gallons of gasoline and heating oil, 6 service stations, 12 employees, 27 years in business and an average of 3 employees per service station.

The jobber market is primarily rural with a market share of about 38%. The major suppliers are Ashland, Exxon, Gulf and Union.

Our Association has suffered a 10% loss in members over the last year. This primarily due to merger of the small jobber with a larger jobber. Two have gone bankrupt.

We forecast a similar loss during 1983. Even more if the present trend in marketing practices among refiner/suppliers continues and the economic climate does not improve.

1. Major refiner/supplier withdrawal from our state since the decontrol of price and allocation regulations are Texaco, and Amoco. Non-renewal notice to six marketers by Union Oil to be effective December 31, 1982. Withdrawals and non-renewal has left 29 marketers in a critical position of seeking supply from uninterested major refiners. Four have become sub-distributors, two have gone unbranded, three have sold to other jobbers, four have converted to a major supplier, two have supply with small refiners and 15 are still looking for a supplier.

The obvious effect of withdrawals is lessoned competition and supply disruptions.

2. West Virginia is largley dependent on imported product through river-terminals. The following major refiner/suppliers have closed their river-terminals: Mobil, Union (2), Amoco and Exxon.

COOPERATION —— INFORMATION

As a result of these closures, the increased distance from rack to destination has become economically devastating to mark'aters whose suppliers have eliminated the traditional hauling allowance and gone to rack pricing.

3. Suppliers' stringent credit requirments have caused a severe 'cash flow' problem for marketers.

4. High interest rates, tightening of, or elimination of the traditional 1%-10 day discount. This coupled with decreases in consumption of petroleum products and unemployment near 14% in our state may very well be the end for many West Virginia small business petroleum marketers.

5. The never-ending problem of refiner/supplier integration into direct marketing, with their retail price often lower than DTW, is making it impossible for the jobber and jobber-dealer to compete. The jobber and dealer gross margin of profit is now lower than history can recall.

6. Proposals at the state level of increased tax burdens on the marketer and consumer will impact heavily on our state. Proposals such as: Increase of 5¢ on gasoline and special fuels tax, removal of all gasoline and special fuels tax exemptions, removal of sales tax exemption on gasoline and special fuels, increase in gross receipts tax, levy an excise tax on petroleum products, just to name a few of what state legislators are planning for our industry.

7. The unfair treatment of many suppliers' allocation programs during the shortfall this past spring. Jobbers being the only ones allocated while refiner direct operations and refiner supplied dealers were not on an allocation program.

8. The refiner "discount for cash" program has further eroded the margin of profit for the jobber and the dealer. Confusing and often misleading to the consumer.

9. Supplier marketing practice of squeezing the jobber out of the commercial-consumer market by going direct to his jobbers' customer with a price lower than he sells to the jobber. Often more than 3¢ below the jobber rack price.

10. The general attitude of the refiner/supplier toward his customer, the jobber. If you don't agree with our program changes Mr. Jobber....Get Lost. Regardless of how unfair, and regardless of what the economic impact on marketers or consumer may be.

Mr. Bedell. Thank you very much. We still have to hear from Mr. Wright.

There is a call for a vote over on the floor of the House. Without objection we will recess for about 15 minutes.

[A short recess was taken.]

Mr. Bedell. At the time we recessed we were about to hear from Mr. Wright from the Illinois Petroleum Marketers Association.

Mr. Wright, your entire statement will be made a part of the record. You may summarize if you wish. Either way, we would hope you would hold it to no more than 10 minutes.

Mr. Wright. I will make it as brief as possible.

TESTIMONY OF LESTER L. WRIGHT, PRESIDENT, J. & L. OIL, INC.; ACCOMPANIED BY GREGG R. POTVIN, COUNSEL

Mr. Wright. Good morning, members of the Committee on Small Business and Energy and other interested parties. Thank you for inviting me to appear before you to attempt to explain the plight of the independent gasoline marketers, jobbers and dealers.

My name is Lester Wright. I am president and majority stockholder of J. & L. Oil, Inc., of Vernon Hills, Ill. This is my 50th year in service station marketing and my 32d year in business for myself. We own and operate 80 service stations in 5 States. I do not consider myself or my company a jobber. We are very simply an independent gasoline marketer. We buy wherever we please, sell under our own brand name and operate our own business without any direct or indirect control of a major oil company. We own most of our station properties and set our own prices; we are truly independent.

Why am I here? I am here to try to explain why my company is losing money and being beat over the head by major oil companies' pump prices. I have many fellow independent gasoline marketers from coast to coast, and they are having the same experience as we at J. & L. Oil. Major oil company jobbers and service station dealers are also suffering from the pressures of their suppliers by cutting off supplies, decreasing margins, rent increases, cutting off of credit cards or imposing a service charge for handling same, eliminating discounts for prompt payment, or unreasonable tightening of credit terms.

I sincerely feel the causes of our plight are as follows:

One, major oil companies have and are subsidizing their marketing operations from profits of other departments, such as refining, transportation, and crude oil.

Two, major oil companies are using the enormous profits they earn from the North Slope and depletion allowances to subsidize their predatory pricing policies.

Three, the complete failure of the Department of Energy to carry out the mandate of Congress to preserve the structure of marketing of gasoline, both branded and unbranded.

Four, major oil companies well-organized plan to completely eliminate independent marketers, most major jobbers, and a substantial number of dealers from the scene by forward integration into direct marketing.

Five, major oil companies control the transportation of petroleum products. By controlling the crude gathering lines, the majors' dominance over crude is greater than their own production. More than 75 percent of the finished product pipeline capacity is owned and controlled by the majors.

Six, more and more majors are resorting to predatory pricing from coast to coast. They could not do this without enormous profits from crude oil production, and lastly tax subsidization.

I am very concerned about my business and others who are in the same boat as we are. We are not slouches at J. & L. Oil at running our business. We work hard at it and we strive to beat the published operating figures and percentages for our business operations, and we generally do beat them all. In spite of this, we have lost money for the past 2 years, as have most other independent markets. Per Illinois Petroleum Marketers Association, most of their jobbers are in the same plight.

In the past few months the major oil companies have intensified their predatory pricing to the extent that on many occasions we find ourselves paying more for gasoline than majors are selling gasoline for at the pump.

Arco has openly admitted to the media they have doubled their service station volume in the last year after eliminating their credit cards and eliminating most of their jobbers and selling dealers at record low prices. I will guarantee you Arco couldn't do this without the benefit of enormous crude oil profits and subsidization of their North Slope operations by the credits granted them by Congress.

In 1974 we built the last car in this country that required unleaded gasoline. In 1982 our consumption of regular leaded gasoline is 50 percent of our total consumption. Something is rotten in Denmark when you consider these facts.

When unleaded gasoline came on the market, service station operators were charged by law with the responsibility of compliance with the public of putting leaded gasoline in cars requiring leaded gasoline. This was an impossible enforcement task.

Most of the gasoline sold today is in self-service stations with the operator or cashier completely removed from the service station island. What I feel has happened is that millions of Americans, hard-pressed for cash, have simply removed the pump nozzle restriction in their car's fueltank pipe and started to use regular gasoline. How else can you account for the startling statistics?

This action on the part of the car owner violates the law, it destroys the car's emissions controls, but it doesn't make the car run badly or give less miles per gallon.

What the buying public is confronted with is a service station price sign advertising regular gasoline from 8 cents to 12 cents per gallon less than unleaded. This is brought about by major oil companies from coast to coast in urban markets persuading their dealers to sell regular gasoline at or near cost to attract customers.

My research indicates the average major dealer is selling regular gasoline at an average margin of less than 3 cents per gallon. To break even, the average dealer needs a commission of 8 cents per gallon, and more likely 10 cents.

Why do we continue to permit the sale of regular gasoline containing lead when any car or truck will burn unleaded gasoline? I will tell you why. The 300 major oil company lobbyists have brought so much pressure that they can't produce enough unleaded gasoline to produce the market.

This is simply not true. Such action—eliminating leaded gasoline—will help our pollution fight, eliminate widespread cheating by the public, help all gasoline marketers by eliminating the selling of regular gasoline as a loss leader.

On October 12, I appeared before the Senate Select Committee on Small Business in Chicago, Ill. At that time I implored that committee to work for and support a national divestiture law outlawing major oil companies from being in any manner involved in the marketing of gasoline. After much thought and discussion with other knowledgeable people, I have made a complete withdrawal from that stand. I do not feel with the present Congress and administration we could get such a bill enacted into law. Second, I am not sure that such a bill might not eliminate multiple independent station operators such as myself. Third our situation is so desperate and urgent that prompt action is needed. Mr. Chairman, I must leave you with this thought: Our situation is desperate; many of us will not be here a year or two from now if things don't change.

What is the solution? We need a law enacted that will require all major oil companies to report quarterly and annually to SEC or IRS their true and honest profits by each department: crude, transportation, refining, and marketing.

Such a law should make it illegal for any major to subsidize one department from the profits of another. Such a law should also make it illegal for anyone marketing petroleum products from selling below cost or in a predatory manner. Such a law could be very simple and would certainly protect the independent marketer, the jobber, and the service station dealer from what is occurring today.

I can certainly attest that we at J. & L. Oil can't continue or survive for 2 more years under present conditions. I am saddened at my present situation because I thought I had created a legacy for my children and loyal employees. It is sad to see the walls collapsing around your business when you are giving it your very best and you are being destroyed by the tax subsidization of your big competitors.

All I ask and my fellow oil men ask is to be able to compete on an even basis. We don't want to start the race 10 feet ahead of the starting line.

Gentlemen, thank you for letting me appear today, but I must stress to you the urgency of our situation.

Mr. BEDELL. Thank you very much, Mr. Wright. We appreciate all your testimony.

Mr. BEDELL. Mr. Hiler?

Mr. HILER. Thank you, Mr. Chairman.

I will address this to the entire table. I think one or two of you may have made the comment—and I know it was made several times yesterday—that the credit surcharge is in fact resulting in higher prices for the consumer on gasoline on average. Also, many have said in the last 2 days that the net results of everything that is happening are anticompetitive and essentially it is anticonsumer.

I am curious if there was a perfect market in gasoline today, eliminating the abuses that many of you have referred to, how much lower do you think the price of a gallon of gasoline would be if I went to the pump to buy it?

Mr. **Bailey**. I think it would be awfully hard to say how much lower. I think I can address part of that question by saying that on the part of all of the branded jobbers that I know that are affected by the surcharge, most of them run from 30 to 50 percent of their volume through on credit cards.

If you put a weighted average on their volume for credit card costs, you are increasing your product cost base from 1 cent to 1 ½ cents. This has to be passed through to the street.

As a typical example, day before yesterday morning, when I left Dallas, I observed a Gulf station priced at 1.049. Now, if you take the jobber price that the Gulf jobber is paying on that same date, put into it the tax, the freight and the 3 percent weighted average charge, you have the jobber at a 1.05 net cost laid in.

You know, somewhere in here we are not comparing apples to apples and the gentleman in Dallas cannot be charging the same charges or passing them through to the consumer.

So it is real difficult for me to address what you could expect. I think when you talk about a Gulf product in Wichita Falls, Tex., you might be talking about just 1½ cents less if the surcharge were not in there because I think your jobber is going to operate at the very minimum margin necessary to run a profitable business.

In the metropolitan areas, it is just awfully hard to find out what is going on because in that case the Gulf product is being sold on a corner that probably would appraise from one-half to three-quarters of a million dollars, you amortize that, plus operating cost, put all the charges in, I don't know where it should be on a retail price.

Mr. **Hiler**. What you are saying is that you feel that the average price of gasoline would be lower?

Mr. **Bailey**. Oh, yes.

Mr. **Hiler**. OK. Then let me take this a step further. If one of the difficulties that we have that let's say the majors have in the petroleum market today is the declining market share, which I think several people testified to that extent yesterday, and I know Mr. Lundberg did, that the majors have less market share, and in general we know just from looking at the overall numbers that the sales of petroleum product gasoline is declining in the country, or certainly stabilized, so you have a more competitive market for us, and if market share is something that they are all trying to get, why would you have this concerted action by the industry that would appear to raise prices if what they are interested in doing is getting market share?

In fact, if you take the major oil companies today, their profits are down significantly from what they were as a percentage of sales dollars, a percentage return on assets, than what they were even 1 or 2 years ago.

I am not sure that I totally understand why—and I asked them when they were here—a major company would consciously make a decision to raise the price of their product and take the——

If I might diverge for a minute: I had a professor in college who taught me basic economics. He said the thing that always broke up every monopoly or cartel was the SOB theory. What's the SOB theory? He said, well, there is always someone who thinks he is going to be able to get around this cartel action and will lower the prices.

Why wouldn't some major oil company decide if all these other oil companies are consciously raising their price, I am going to go in and get market share by lowering my prices and not have these credit surcharges?

Mr. THORNHILL. Could I address that just a little bit?

Mr. HILER. Sure.

Mr. THORNHILL. When you look at the overall price of gasoline today, I think we have to be honest and say that in the shortrun probably the price of gasoline would not be any lower than it is today because the SOB theory that your professor alluded to I think is exactly one of the evils we are pointing to, that is that in many areas the majors or the refiners—not all majors—that refiners are in fact pricing their gasoline at cost or below to either maintain or build their market share in a society where demand is going down.

However, in the long run, with hundreds and thousands of small businessmen being driven out of the market, in the long run, as you carry that theory through and as that competition leaves the market, there is no doubt but what the price of gasoline would go up substantially more than let's say competition would permit it to go up.

I think today that in the shortrun overall, because of the market evils going on, the price of gasoline probably would not be lower. Today, the refiners on the whole at the retail level, the price of gasoline is going down and has gone down 8 to 10 cents in the last 12 months.

It is the long run effects which are important. Just to give you a typical example, there is just one strip, we call gasoline alley, between Fort Wayne and New Haven, Ind. I don't know if you have ever been there or not. It's on the major highway. In 1973 I would say there were two refinery direct units in that area and ten independent businessmen operating. Today there are six refiner direct units operating in that area and not one single independent businessman. They have all been driven out of that gasoline strip. That I think is typical of what is going on.

Mr. HILER. Let me take it a step further. I hope you realize I am trying to play the devil's advocate because I am just curious in getting the different viewpoints.

I have seen studies which would indicate that there is absolutely no evidence or no reason to think that in the American market, with the type of diversity we have in distribution systems of gasoline and petroleum products, and with the number of companies we have involved nationwide, that there is no reason for any major oil company to believe that if it just cut its prices substantially to get market share, that it could in turn later down the line have a monopolistic power, that they could raise their price high enough to overcome that loss of profit today.

What I am saying is that according to the study there was no reason to believe that this predatory pricing was taking place because incumbent on that is someday down the line you are going to get those profits back.

In other words, if you engage in that, you feel that you are going to get the profits back down the line when you have greater monopolistic or greater economic power in the marketplace. The study indicated that there is just no reason for a major oil company to believe that today.

Mr. THORNHILL. I believe it is true that no major oil company today can price at a level where he is going to drive everybody out of the market so that he can recoup all that profit overnight. However, let's say there are 20 players in a given market, with various marketing mix, whether it be dealers, independent marketers like ourselves, major refiners, and small refiners with direct outlets. If over a period of time you can reduce the number of marketers in a given area from 20 to 10 and you get down to 10, I do not in any way want to imply that that puts them in the position to be a cartel or anything, but it certainly puts them in the position to gradually raise the price of gasoline and make let's say more than an average profit as compared to the profit when you have 20 players or marketers in a given area and they slowly disappear down to ten.

Mr. BAILEY. I think that one of the things you are saying here, and I think it is reported in quite a bit of the media, is that the independent has in the past several years, through control periods, had probably 30 to 40 percent of the total volume sold in the United States.

I don't think there is any question it. Several of the companies have been very open and honest about it. They want that business back. This is a directed effort to put it back in their pockets. If they have to walk around the bodies or step over them, it makes no difference. They are going to do it.

They are going to do exactly what he is saying, that at the proper time they will get their profit because they have the whole deck. They can deal any hand to anybody they want.

Mr. WRIGHT. I differ with your theory. I think the majors are engaging in a forward integration movement to try to get back to market gasoline from crude to the customer. I know that if I am given a fair opportunity, I can beat the heck out of them in operating costs. But if you believe your theory, then why is gasoline in Europe 2½ times what it is in the United States?

Mr. HILER. A lot has to do with the fact that they get one heck of a lot more taxes on their gasoline than we do. We already have quite a bit on ours, but they have a lot more.

Mr. WRIGHT. I don't really think it is that much. Generally, there just isn't the competition, overseas there is here.

Mr. HILER. Well, they have upwards of a dollar tax on gasoline in Europe.

Mr. WRIGHT. It is high, but it is not the difference we have in $3 against $1.25.

Mr. POTVIN. Congressman, something that you have to take into consideration here, first of all, without using your characterization——

Mr. HILER. Can I interrupt just 1 minute?

Mr. POTVIN. Sure.

Mr. HILER. I was reading a recent study—just to fall back on your point—which said, as I said, we are going to have the majors here and it will be interesting to get their comments, and I know there are a bunch of majors out there, and I hope someone will comment on this, that the profitability from their foreign operations actually was less than their domestic operations.

Mr. POTVIN. Historically, are you saying that they made more profit from imported crude than domestic? Recently within the last 6 months Petroleum Intelligence ran an analysis showing that domestic crude is more profitable now, and of course that has very deep consequences in terms of the crude sufficient, or nearly so, large domestic refiners.

I hesitate to use your phrase SOB. I always think of that as standing for Super-rich Oil Barony. Exxon is an SOB in that sense, and so on down the line, but Arco clearly fits the description that you gave. Of course it was your phrase, not mine.

Mr. HILER. My professor who talked about the son of a bitch theory was saying the great thing about the free market and the free enterprise system was that is what prohibited monopolies and cartels from existing, because there was always somebody who wanted to get in and just get a little advantage. That is what maintained free and open market. I was not using that term in the context that my late professor said it, in a negative sense.

Mr. POTVIN. I am sure neither of us is being pejorative, Congressman. There is an area of monopoly, though. This committee has heard many jobbers testify that they are being charged a great deal more by their supplier than are the direct supply dealers.

Yet curiously, when they seek another refiner, because their supplier is charging them so much as to make them noncompetitive, they can't get another branded contract. They are locked into that brand.

If they are truly and sincerely seeking to increase their market share—and that is what each player should be doing in a free enterprise economy—why aren't they competing for the jobber's business?

Mr. HILER. My only answer is obviously because they don't feel that is the way to do it, but I will wait to hear what they have to say about that.

Mr. Chairman, I yield back my time. The buzzers are ringing. You can take over.

Mr. BEDELL. I will try to cover my questions in 5 minutes. You can either stay or go as you want to, Jack, so we can still get down in time to vote.

Mr. Bailey, roughly how many of your jobbers have gone out of business, do you know, or Mr. Thornhill, either of you, in the last year? A percentage, or any figures?

Mr. BAILEY. Our membership, as I stated, has reduced by 10 to 12 percent in the past 12 months.

Mr. BEDELL. Ten to 12 percent.

Mr. BAILEY. Yes, sir.

Mr. **Bedell**. If conditions stay the way they are, what would you anticipate during the next 12 months if practices are not changed, or anything of that nature?

Mr. **Bailey**. I would say in all probability we are talking about another 20 to 25 percent fallout.

Mr. **Thornhill**. Nationwide, Mr. Chairman, in the last 6 months approximately 10 percent of the jobbers have either gone out of the business, merged, or have been bought out because of their lack of capital.

Mr. **Bedell**. In the last 6 months?

Mr. **Thornhill**. We anticipate it will probably increase in the next months. A State-by-State fallout is fairly well shown in the documents we have attached.

Mr. **Bedell**. So you would expect it to increase?

Mr. **Thornhill**. Yes.

Mr. **Bedell**. Obviously, the next question is, you indicate in your testimony that you thought you ought to pursue other efforts before we try to do anything legislatively. I think most everybody would agree with that. I certainly would.

How long do you think we ought to wait?

Mr. **Bailey**. Sir, as I said——

Mr. **Bedell**. You have already waited, and you have seen 10 percent of your people go out already.

Mr. **Bailey**. Well, I think that is probably part of the reason why we wouldn't come in and sit down here today saying, let's go for divestiture, divorcement or something like that. I think the fuse is so short for so many of our jobbers that we need to ask you to ask the gentlemen who will be on your panel next what they intend to do about the things that have been alleged, and how soon they can do something about them and use the powers that you have. If nothing can be done, I can assure you our group will stand shoulder to shoulder with you at whatever day you say we need to make our move because we have got to press forward. Sir, we think we have to go through the steps that are available to us. Yours is the next, and the next one, we realize, is to go for a bill to try to protect us.

Mr. **Bedell**. I don't want to make that choice. I don't think Mr. Hiler does, or anyone else, but we do operate in a democratic society and we are here to serve you and everyone else. You are well aware this is not the first time we have had hearings of this type where we have talked about these sorts of problems. Unless the testimony we have heard so far is refuted or incorrect, certainly it does not indicate that the situation is getting better for you.

I guess your testimony would indicate it is not getting better for you. Isn't that correct?

Mr. **Bailey**. It is not getting better, and I say again, if the gentlemen that are on the panel next can't answer these charges to our satisfaction, or to yours, you can rest assured our next move will be to go for some legislation.

Mr. **Bedell**. Well, the purpose of this is not to try to see about legislation. The purpose is to try to find out what the problems are. Of course, obviously, the next question becomes, what do you do about those problems, and how are you trying to solve them.

We had testimony yesterday that in spite of the supposed excess refinery capacity and glut, that many jobbers are being restricted as to the volume of product that they are getting. Is that correct?

Mr. **Thornhill**. That is true in some cases, yes. That is true in the case where a given refiner is trying to economically shift a greater percent of his product either through salaried stations and/or direct dealer outlets.

Mr. **Bedell**. It is not a shortage of product?

Mr. **Thornhill**. It is not a shortage of product at all, definitely not.

Mr. **Bedell**. I have got about 1 minute here. May I ask this question, if we have time. Mr. Wright, you talked about tax subsidization of the big oil companies. Did you have anything specifically in mind?

Mr. **Wright**. Only depletion allowance and the North Slope credits.

Mr. Potvin, did you have something to say?

Mr. **Potvin**. In line with your former question, in Illinois, and in several States represented by the statements in the NOJC package, you will note that the jobber's share of the market is falling faster than the overall consumption is falling, and sharply so. Now, this is at a time when hundreds of new jobberships were being created by consignee conversions. If you think about those two in concert, it says something.

Mr. **Bedell**. What do you mean by consignee conversions?

Mr. **Potvin**. During the early eighties and late seventies, hundreds of consignment agents were converted to jobberships.

Mr. **Bailey**. The suppliers encouraged them to buy the assets in their local community and go jobber, instead of being consignee.

Mr. **Potvin**. At a time when jobber ranks were being added to total aggregate jobber market shares declined faster than consumption generally.

Mr. **Bedell**. Thank you all. We appreciate very much your testimony.

Mr. **Bailey**. Thank you.

Mr. **Bedell**. The committee will be in recess for 10 minutes. When we return, we will take the next witness.

[A short recess was taken.]

Mr. **Bedell**. Our next witness is Mr. George Babikian, senior vice president of Arco Petroleum Products Co.

Mr. Babikian, would you also advise us as to the identity of the others who are with you here?

STATEMENT OF GEORGE H. BABIKIAN, SENIOR VICE PRESIDENT, ARCO PETROLEUM PRODUCTS CO., ATLANTIC RICHFIELD CO.; ACCOMPANIED BY RICHARD C. MORSE AND J. D. KOWAL

Mr. **Babikian**. Thank you very much, Mr. Chairman.

I am beginning to think I should change my name to SOB, but in any event I am George Babikian and I am responsible for the petroleum operation of Atlantic Richfield Co. On my left is Dick Morse of our legal department, and on my right is Jay Kowal, who is in charge of our wholesale gasoline operation. Dick and Jay will assist me, if necessary, with any questions that you may have.

I have just a few remarks that relate to the written statement that we submitted. Let me go through these as quickly as I can.

As you probably know, Arco has gained a great deal of public attention for the marketing strategies that we have adopted. Beginning with our decision last April to cancel credit cards and reduce the price of gasoline, we have enjoyed tremendous growth in gasoline volume and in market share. This has brought a great deal of media interest and has triggered quite a bit of reaction in the marketplace.

The overall effects of our action we believe are quite positive. Consumers—and they are a very, very important factor—are paying less for gasoline, while our dealers are enjoying healthy returns on record volumes of product that they are now selling. In most markets our distributors, both branded and unbranded, are buying gasoline from us at very low prices, and on balance wish they could buy more. Also we, Arco, we are enjoying robust earnings in the refining and the marketing section of our company.

In a sense, what we have done is a casebook example of how the free enterprise system should work. One competitor implements a strategy that lowers his unit costs. The savings are passed along to the customer, and the consumer responds by shifting his patronage. This in turn brings larger volumes and profit to the company and to its dealers. Eventually competition has to react. Competition does react by lowering prices. In the final analysis, all consumers benefit.

Obviously, not everyone is happy in this kind of a scenario. In a steady or a declining market the gains of one company come at the expense of another or, generally speaking, from the least efficient operator. This least efficient operator must then decide to either tighten up its own operation or withdraw from the market and put its resources to work somewhere else. In the real world, many times people postpone such difficult decisions as long as they can. They look instead for reasons outside the competitive arena to account for their declining situation.

As our marketing strategy began to take hold last spring, some of our competitors looked for hidden anticompetitive factors and special advantages they said we had that accounted for our success.

Some claim, for example—and you heard these yesterday in spades—that Arco charged less for its gasoline because we are not charging the right price for our North Slope oil. This is simply not the case. We calculate the market price of our ANS oil very carefully and very accurately.

Remember the Internal Revenue Service monitors our tax situation very closely. It is up to the IRS to make sure that Government isn't being cheated on the windfall profits tax payments that oil companies make. Now, the IRS has been auditing Arco on its North Slope windfall profits tax since January 1982, long before we implemented our credit card strategy. This is an ongoing process, and it is as it should be.

Just remember, if we have established a wellhead price that the IRS finds to be inaccurate or in error, we have to go back to the very beginning and pay windfall profits tax plus penalties. It could be hundreds of millions of dollars if these allegations that we are hearing are correct; we never have a chance to recover his money.

It would be patently ridiculous for us to establish a wellhead price that we are not 99.9 percent sure of. It would be ridiculous for us to do so.

Does this mean that Arco doesn't have any advantage because of its North Slope oil? Of course not. Most companies would be better off with their own raw material source, which allows them to plan more accurately, and not be subjected to the vagaries of the spot market, the contract market, or the wholesale market, but to assert that this is anticompetitive is absurd.

We are nearly self-sufficient in domestic crude, and we have that advantage. It is a big advantage, but Arco has spent billions of dollars developing and finding that oil. No one gave it to us; we took the risk and now we are beginning to enjoy the benefits of an assured supply of crude.

I think you have to look somewhere else for Arco's price leadership in the marketplace, someplace in the operating stream. It isn't because we have got some special advantage with North Slope crude.

This is the main point of the testimony that I want to give this morning. I want to show that what we have done is completely in keeping with fair competition and indeed reflects the kind of entrepreneurialship and innovation for which American business is noted. I am not going to deny for one moment that what we have done has hurt our competitors, not for one moment. It has. But I will absolutely deny that it has hurt competition. That is a very, very important distinction.

We are now reaping the benefits of a strategy that was first conceived several years ago. It was conceived essentially when we realized that the petroleum products market was undergoing a significant change. The key elements in that change were increased price sensitivity of gasoline by the consumer and also conservation.

We began a series of steps that would both maximize the benefits of having our own secure crude supply, and also prepare us for the diminishing demand that we knew was coming. We were determined back in the midseventies to become a very efficient marketer.

I am not going to go through all of this for the sake of time. Let me simply summarize what I have written here.

Our first step in the process was to put our refining operation in order, to make it the most efficient refining operation in the United States. I think we have achieved that. We have spent hundreds of millions of dollars, and we spent them in 1970 dollars, which gives us the advantage we have today. I think I can say without much reservation that we indeed have an exceptionally efficient refining operation. The details are in the written statement that we have submitted. Let me not spend any more time on our refining operation. If you have questions about it later, I will be glad to answer them. So much for refining. We did our homework in that end of our business, and we have exceptionally efficient refineries throughout the United States.

Let me dwell a little bit on marketing since this seems to be the general thrust of this hearing. As our first step in our quest for marketing efficiency, we decided to give up marginal territories. We wanted to operate in areas within easy reach of our refineries.

Eventually we withdrew from about two-thirds of our marketing territory, and now we operate on the west coast, the Northeast, and metropolitan Chicago.

In each case we looked to areas where we had a basic foundation of strength on which to build. This is step one in this process. We got out of geography we didn't think offered us a rosy future.

As a next step, we sought ways to improve the way gasoline was marketed. We felt that in this tough decade of reduced demand it was essential that we give our dealers locations that had the potential to make it. We reviewed our entire deck of service stations and we sold over 4,000 locations. We kept only the locations that we felt had the potential to be winners, the potential to make it in this tough decade of the 1980's.

That was step two, if you will; categorizing these steps in a very general kind of way. The first step: Get out of geography you don't belong in, that you don't have a basic foundation of strength. Second, get rid of stations you don't think have the potential to make it in a tough environment.

The third step was to introduce new and different marketing techniques. For instance, we were the first major oil company to offer self-serve on a national basis, which we did in spring 1975. Our dealers enjoyed tremendous growth and profit from that move for the next 4 years because of this lead position we took in self-serve.

In 1975 our lessee dealers had an 8-percent gain over 1974. They had an unprecedented 18-percent gain in 1976. They had a 10-percent gain in 1977, and an 8-percent gain in 1978. Then the Iranian revolution hit, and our growth and retail volume stopped, but when the crisis was over, our volume in our lessee stations surged again. In the fourth quarter of 1981, our lessee stations had approximately a 30 percent increase.

The next step we took, we began to develop——

Mr. **Bedell.** Excuse me. We don't want to cut you short. We are most anxious to hear from you. It is over 10 minutes, and we have four other witnesses.

Mr. **Babikian.** I better hurry up.

Let me simply summarize all of this, if you like, by saying that we developed other sidelines that enhanced the profitability of our dealers. Our am/pm concept was one of these moves where we married the concept of high gasoline volume and convenience foods in high traffic locations.

It has been tremendously successful. Right from the beginning our am/pm dealers have made more money than our conventional dealers. Since we eliminated our credit card in April of this year, our am/pm dealer has continued this differential profit performance.

Our average am/pm dealer has improved his profit since eliminating the credit card by almost 50 percent. Our average conventional lessee dealer has improved his profit from gasoline approximately 20 percent since we eliminated our credit card. Our dealers and our distributors are in a position to survive in this tough market of the 1980's because of the plans and the programs that we have given them. Over 80 percent of our lessee dealers are in favor of the program that we have implemented since April of this year. Only one out of five are dissident dealers. These are very vocal dissident dealers, but they do not in any way, shape, or manner represent the mainstream Arco dealer.

We have put in place the program in the marketplace that we think will enable our dealers to survive. In October of this year our average lessee dealer did 123,000 gallons per station. The average for the industry, just for the sake of comparison, is roughly 50,000 gallons. Our stations pump 2½ times the national average, giving our dealers economies of scale.

Our distributors, both branded and unbranded, in most of our markets are buying gasoline cheaper than their competitive counterparts. For instance, in the State of California our distributors are buying at around 3½ cents a gallon below the prevailing average competitive distributors are paying for gasoline. Again, a program that has enabled us to put our dealers and our distributors, if they have prepared for the decade of the eighties, in a position of surviving. Sometimes even success has had its problems. The demand surge when we launched our credit card elimination program in the spring of this year, we had to go out and buy product on the spot market, and even after we did buy product on the spot market, we still didn't have enough gasoline to meet demand fully.

We were forced to allocate our wholesale customers. Our branded distributors received 100 percent of contract volume. I don't think that is an outrageous kind of a position, I don't think it is unreasonable, but we can readily understand the frustration of some of our branded distributors who want to buy more. I will say unequivocally that we have honored all of our contracts, that we have tried to be fair, and will continue to be in this end of our operation.

Let me skip very quickly, for the sake of time, toward the end. As I said, our moves have been designed to improve our market position, to strengthen our dealers and our distributors, and to give the gasoline customer better value for their dollar. I think that is a key point. We are currently involved in a survey of consumer attitudes toward gasoline pricing and will share the results of that survey with you, Mr. Chairman, if you like, as soon as they are available.

We know the consumer is the real beneficiary of what we have done, and he or she has not really been hurt from it. This national survey is the first step to publicize the consumer's feeling.

Meanwhile, we hope sincerely that the Government sector of our industry will turn a deaf ear to any plea for intervention in the marketplace. We believe such intervention is anticonsumer, we believe it provides questionable and short-term relief for the marginal competitor, and it threatens long-term damage to the marketplace.

Intervention may help competitors, but we don't think it helps competition.

Now if I may answer any questions, I will be glad to do so.

Mr. **Bedell**. Thank you very much.

[Mr. Babikian's prepared statement with attachments follows:]

PREPARED STATEMENT OF GEORGE H. BABIKIAN, SENIOR VICE PRESIDENT, ARCO PETROLEUM PRODUCTS CO., ATLANTIC RICHFIELD CO., INC.

Atlantic Richfield Company is pleased to have the opportunity to participate in this subcommittee hearing and provide our views on the changes that have occurred in gasoline marketing following decontrol in January, 1981. We stand in the market today as a highly efficient gasoline refiner and marketer, and our strategies have resulted in lower prices for the consumer, higher profit opportunities for most of our dealers and distributors and increased corporate earnings from this historically marginal sector of our business.

The decision by Atlantic Richfield Company in April of this year to eliminate credit cards and reduce its gasoline prices in order to appeal to an ever widening group of price conscious consumers has been praised by many but also condemned by our critics. The critics have looked for hidden, anticompetitive factors and special advantages that they claim account for our success: special tax breaks on Alaska North Slope (ANS) crude; tariff benefits from the Trans-Alaska Pipeline Systems (TAPS); low wellhead prices that they maintain are responsible for our low prices in the marketplace. These charges are simply not true and will be addressed in greater detail later in this testimony. The plain truth is that Arco's price leadership at the gasoline pump is due to its marked improvement in efficiency during the past decade. Let me explain.

EXTERNAL FACTORS INFLUENCING ARCO'S STRATEGY

The groundwork for our program was laid during a decade of conscious effort to improve efficiency. Atlantic Richfield Company recognized in the mid-1970's that new forces were emerging in the marketplace of such magnitude that entirely new strategies would be required for us and our customers to compete effectively in the 1980s.

First, it became apparent in the mid-1970s that federally mandated automobile fuel efficiency standards and conservation would eventually lower the demand for petroleum products. This has proven to be a very accurate perception. In 1978 gasoline demand in the United States peaked at 7.6 million barrels per day, and thereafter declined each year to 6.6 million barrels per day by 1981, a decrease of over 13 percent. For the first seven months of 1982, gasoline demand has averaged about one percent below 1981 levels. This is a hard fact for many in the industry to accept as gasoline demand had continually increased for over 30 years.

Decreased demand eventually has to culminate in strong competition in the marketplace. It logically follows that the more efficient a refiner and marketer becomes, the better positioned he and his customers will be in a highly competitive environment.

Another marketplace change has been consumer sensitivity to price. The 1973 embargo resulted in substantially higher gasoline prices, and consumer sensitivity to price increased dramatically. The 1979 Iranian revolution caused another increase in gasoline prices that renewed and reinforced this price sensitivity. Increased state and local government taxes on motor fuel have pushed gasoline prices even higher. We have learned that the higher the price of gasoline, the more price sensitive the majority of the market becomes. Today, price is the single most important factor in the marketing of gasoline. Nearly 70 percent of all gasoline sold in the U.S. this year will be sold through self-serve facilities. Why? Because self-serve means lower prices.

Even though this consumer trend of increased price consciousness was rapidly accelerating during the 1970s, government price and allocation controls discouraged innovative programs responsive to this growing consumer trend. This is not surprising as the price and allocation control program locked in supplier/purchaser relationships, historic pricing relationships and marketing practices. Controls contributed to inefficiency, and fostered a system that sustained obsolete operations and in some instances actually rewarded nonproductive business behavior. Many of the changes which have occurred in gasoline marketing since decontrol would have been implemented freely and naturally during the 1970s if the market had been free of government regulation. The magnitude of change since decontrol reflects the pent-up demand for change which evolved during 10 years of controls as consumer interests and economic conditions have changed.

Arco's response to these factors of declining demand and increasing price sensitivity was to launch a quest for maximum efficiency. The results were blurred, or in some cases delayed, by the obstacles of government controls. Since decontrol, they have crystalized.

ARCO'S DRIVE FOR EFFICIENCY

Refining

We recognized early on that world crude supplies would gradually decline in quality toward heavier and sour types of crude requiring extensive refinery modifications. We have made many capital investments in our refineries to capitalize on this trend. We trimmed and modernized our refinery network into one of the industry's most efficient systems. For example:

In 1971, we completed the construction of our refinery at Cherry Point, Washington. This refinery is designed to run totally on sour crude oil. In 1979, we constructed a calciner at this refinery to upgrade petroleum coke. Our capital expenditure for these projects was $251 million.

In 1976, we built a new crude still at our Houston refinery to handle sour crude and improve operating efficiencies. The cost when constructed was $189 million.

In 1974, our Philadelphia refinery was restructured to improve efficiency. A fluid catalytic cracking unit was constructed in 1981 to increase light product yields. These projects cost $169 million.

The Carson, California refinery was modernized in 1980. A FCC riser cracker unit was built in 1981, and the coking operations were expanded in 1982. Our investment of $126 million has resulted in increased yields of gasoline and distillate.

We invested $125 million in fuel efficiency improvements in our refineries during the period 1969 to 1982. Through these efforts, we have been able to improve energy efficiency of our refinery operations by 20 percent since 1973.

Company and refinery	Cost
Standard Oil of California, Pascagoula, Miss	$1,000,000,000
Shell Oil, Carson and Martinez, Calif	800,000,000
Saber Energy, Corpus Christi, Tex	535,000,000
Amerada Hess, St. Croix, U.S. V.I	500,000,000
Phillips Petroleum, Borger, Tex	360,000,000
Ashland Oil, Catlettsburg, Ky	225,000,000

We sold our East Chicago, Indiana refinery in 1976, a unit which did not fit into our long range strategy. We also restructured our refinery output by shutting down older, less efficient crude topping capacity.

The capital expenditures for these major improvements was $860 million. If these projects had been undertaken in the last year or two, inflation and other factors would have increased the cost to approximately $1.8 billion. These investments and improvements in our refining system place us in a strong competitive position for the 1980s. This can be demonstrated by a few comparative operational statistics:

The average capacity of our refineries is 165,000 barrels per day. The average for the industry is 65,000 barrels per day. We enjoy economies of scale.

Our sour crude processing capacity is 84 percent compared to 55 percent for the industry. Sour crudes are more abundant and less costly than sweet crudes; thus we benefit from lower raw material costs.

Our yield of light products (gasoline and distillate) is 76 percent. This is about 10 percent higher than the industry average allowing us to manufacture more high value products and less low value botton of the barrel products.

Our refinery system is now virtually in balance with our proprietary crude oil production, insulating the Company from the insecurities of the spot market and foreign crude oil market.

Each of our refineries is strategically located on a deepwater port.

Our advantage is that we made our major captial investments in our refineries over the past decade rather than being faced with the high cost of making these changes today. Attachment A illustrates Arco's capital spending on refineries over the last 10 years and Attachment B is an industry comparison based on published data. Arco has most of its capital commitments behind it while others in the industry appear to be just now entering into a spending phase to upgrade their refineries. This was clearly indicated in an article in the October 25, 1982 issue of Business Week which listed the following projects recently announced by refiners:

These projects represent investments of over $3.4 billion dollars to upgrade existing refining capacity.

Marketing

We have also taken major steps to improve our marketing operations. In geographic areas where our low sales volume and high distribution costs did not justify our continued presence in the market, we withdrew from the area and sold our assets. In 1973, we marketed gasoline in 30 states; today we market in 17 states—on the West Coast, in the Northeast, and in Metropolitan Chicago.

During this period our number of service station properties was reduced by 4500 units or 60 percent of the locations supplied in 1973. In addition, over 500 terminals or bulk plant storage facilities were phased out. This resulted in a more efficient distribution system. It saved the expenditure of significant amounts of capital that would have been required to keep these facilities in compliance with environomental standards and substantially reduced our ownership, tax and maintenance costs.

Other efficiency measures since 1973 include the reduction of personnel in refining and marketing from 12,600 to 7,300 and a reduction in the number of marketing field offices from 51 to 5.

The success of Atlantic Richfield Company's marketing program has not resulted solely from the streamlining of our operations. We believe that we have been at the forefront in introducing innovative practices to the marketplace. In 1975, Arco became the first major oil company to launch self/serve on a national basis. Self-serve has since been widely adopted and is now a standard in the industry. Later we pioneered the mini-market concept which led to the implementation of our am/pm franchise program. Today we have over 700 am/pm franchisees, and these units have realized substantially higher volume and provided significant profit improvment for the operator. Recently on the West Coast, we introduced our MP & G (Mileage, Performance and Guarantee) franchise which combines gasoline with an automotive tune-up center facility. We have been pleased with the test market results of this program in Boston.

We believe that one of our most successful and innovative moves was the decision to eliminate the Arco credit card effective April 15, 1982. Our credit card system cost us $73 million in 1981, and it appeared likely that these costs would continue to increase each year. After various alternatives were considered, we concluded that our customers would benefit most by doing away entirely with the credit card system. We passed our savings on by cutting the price of gasoline nearly three cents a gallon. Consumers have been quick to react to our lower prices. Our total gasoline sales have risen 15 percent compared to a year ago, and the increase in our service stations is over 50 percent. Our program has given the majority of the motorists what they want: lower prices, combined with quality products.

One bellweather of performance is lessee dealer average gallon throughput per month. In 1973, our average was 29,000 gallons per month. Our current average per lessee station is slightly over 123,000 gallons per month, compared to an average for the industry of approximately 50,000 gallons per month—nearly 2½ times the industry average. The tremendous economies of scale in gasoline retailing mean Arco dealers have an excellent opportunity to compete profitably and effectively.

These have not been easy decisions. No single "quick-fix" thrust could possibly make a large complex operation the most efficient overnight. Our refining-market strategy has been a gradual, yet purposeful, program-by-program process that goes well beyond our decision to eliminate credit cards.

Benefits of Arco's marketing program

Our marketing program has had the benefit to Atlantic Richfield Company of higher earnings from our refining and marketing activities. There is no question in our mind that the motorist, and most of our customers have benefited as well.

The motorist has benefited from lower prices for quality products and convenience. As a result of our lowering gasoline prices earlier this year, reflecting the elimination of our credit costs, gasoline prices in the states where Arco markets (the West Coast and the Northeast) have increased less since March than in states where Arco does not market. According to a study of selected cities completed by Lundberg Survey, Inc., price increases from March to August of this year were over 20 percent lower in areas where Arco markets than in areas where Arco does not market. The implication is quite clear; Arco's low-price appears to have been instrumental in providing gasoline to consumers at lower prices in the states where we market even if these consumers did not buy from Arco.

The response by the consumer has been most gratifying. He has supported our programs with his pocketbook and in writing. Comments from consumer organizations, individual customers and the press have been very favorable:

As the personal opinion of Mr. Stephen Brobeck, Excutive Director of the Consumer Federation of America (CFA) has stated that "Arco's decision to eliminate credit cards and to lower prices clearly serves the consumer interest. At a time when rising joblessness and continued inflation erode purchasing power, consumers will benefit from the low price alternative offered by Arco."

From the President of the League of Women Voters of the United States: ". . . I appreciate the difficulty of reaching and implementing such a major policy change and I applaud Arco for making this important step on behalf of consumers . . ."

On September 28, 1982 the Riverside, California Enterprise reported "Atlantic Richfield Company started the trend earlier this year when it announced it was ending its credit card program in favor of selling gasoline, at lower prices, for cash . . . These days that almost constitutes an old-fashioned gas war. If it lasts, motorists . . . just as in the good old days . . . are likely to be beneficiaries."

And from the Clinton, Iowa Herald on September 2, 1982 (an area where Arco does not market gasoline)—"After becoming a nation of credit buyers, Americans now are turning away from plastic money in many areas . . . and saving money to boot. Atlantic Richfield is the precedent-setting company that was first to do away with credit cards and use the savings to slash gasoline prices."

Attachments C-1 through C-3 are just a few of the statements being made about or marketing program. We are in the process of conducting a major national survey of consumer attitudes including gasoline pricing policies. We will share the results of this survey with this Subcommittee when it has been completed early next year. We know that consumers are the real beneficiary of our program and that they have not really been heard from. This national survey is the first step in publicizing consumer feelings.

We also believe that our overall program has positioned our dealers and distributors for success in the tough gasoline market of the 1980s. We are all aware of the status of many of the small businessmen in America today. Many are being squeezed by a sluggish economy. Small businessmen in the gasoline market face the additional problem of decling demand. We sincerely believe that we have prepared or customers for the marketplace of today and the future better than any of our competitors.

Since the elimination of our credit card program, the profitability of many of our dealers has increased substantially. Under the terms of our franchise agreement, we have access to the monthly operating statistics of our am/pm franchisees. Our average am/pm franchisee has improved his profitability by 50 percent since we eliminated our credit card. The major portion of this profit improvement comes from increased gasoline sales. Although we do not have precise figures from our conventional lessee dealers, it is our best estimate that the profit from gasoline sold by them has increased approximately 25 percent over last year's level. Attachments D-1 through D-15 are letters from some of our dealers expressing their opinions of our program. Over 70 percent of our lessee dealers are in favor of our program with only one in four expressing dissatisfaction. Unfortunately, this minority is very vocal but clearly does not in any way represent the mainstream of Arco dealers.

Although some distributor customers have been critical of our new marketing programs, the fact remains that, in most areas, they are able to purchase gasoline from us at prices which are lower than from any other major oil company, and are buying much more of their contract volume than just prior to our credit card elimination. While we have eliminated some business practices that were "locked in" under price and allocation controls, we believe that the advantage of lower prices will result in a more profitable operation for the efficient jobber. Our pricing program is designed to place both dealers and jobbers on a basis of comparable profitability to Arco. Each class of trade is valued on a stand alone basis.

Responses to critics of our program

Any successful program is likely to have its critics and our marketing program is no exception. A segment of our competitors in the gasoline market have claimed that we enjoy certain tax benefits from the production and transportation of Alaskan North Slope crude oil. They further allege that we are using these special tax and tariff benefits to sell products at subsidized prices far below the prices of our competitors, rather than reinvesting this money in the development of new production. Nothing could be further from the truth.

Earlier this year, Congress opted to eliminate the Trans-Alaska Pipeline System (TAPS) tariff adjustment provision of the Crude Oil Windfall Profit Tax Act of 1980. This action did *not* correct an inequity in the existing law but did have the effect of imposing a *new* tax on *only* those oil producers having taxable production from the Sadlerochit reservoir on the North Slope of Alaska. Even using the most extreme analysis of imputing the full effect of the tariff reductions to gasoline would amount to *less than two tenths of a cent* per gallon. This amount would be difficult to characterize as a "subsidy." In any case the 1982 amendment renders that basis for crying "subsidy" moot.

Another provision of the Crude Oil Windfall Profit Tax Act which has been attacked by our critics is the exemption for certain Alaskan oil this exemption does not apply to production from the Sadlerochit reservoir which is taxed at the highest rate allowed under the Act. Under the Act, newly discovered crude oil produced from a well located north of the Arctic Circle, or north of the Alaska-Aleutian Range and at least 75 miles from TAPS is exempted from the tax. The only affected field in current production is the Kuparuk field. Our current share of production is about 65,000 barrels per day. The exemption provision has had a profound influence on our decision to develop the Kuparuk Field.

The provision exempting certain Alaskan oil should remain intact in the interest of sound national energy policy. Potential oil resources in North Alaska are enormous but are burdened by the penalty of remoteness and adverse climatic conditions. This penalty translates into significantly higher transportation costs than apply to other crudes. North Alaska crudes are, or course, sold at about the same competitive price in the ultimate markets as comparable crudes in the lower 48. Yet the wellhead price of North Alaska crudes is approximately $11-$13 per barrel less because of these high transportation costs. Additional economic burdens in the form of tax penalties could very well preclude development of a significant portion of further Arctic resources. Future development should not be compromised in favor of the spurious claims being made by a small segment of the gasoline market.

Our critics have also proposed that investigations be made into the tariff levels established for the Trans Alaska Pipeline System (TAPS). In review, Arco Pipeline Company (and the seven other independent common carrier pipeline owner companies), anticipating completion of TAPS, filed tariffs in 1977 for the transportation of oil over TAPS with the Interstate Commerce Commission (ICC), the agency then having jurisdiction over oil pipelines. Arco Pipe Line Company's initial interstate tariff of $6.04 per barrel was established on the basis of long-settled industry practice and precedent in force at the time the decision to construct TAPS was made. As a result of protests filed against the initial rates of all the TAPS carriers, the ICC ordered an administrative investigation of the filed interstate rates and of the cost of construction of TAPS. This investigation and the TAPS proceedings in general, will establish the method to be used in calculating an allowable tariff, a rate of return to be earned by the TAPS carriers, and the rate base against which to apply the rate of return.

The Federal Energy Regulatory Commission (FERC), successor agency to the ICC for oil pipe line rates, is currently continuing the investigation begun by the ICC. An intensive investigation is in short, under way, obviating the need for any legislation on the subject.

Arguments that WPT amendments be enacted with respect to ANS crude oil in general and with respect to the integrated producers of ANS in particular are ill-founded. The "changes" which have been advocated constitute provisions which are already fully integrated within the legal infrastructure governing the WPT. The WPT "removal price" is determined for ANS crude oil under the generally applicable WPT provision governing the determination of WPT "removal price" for all crude oil. Similarly, integrated producers of ANS crude oil are subject to the same WPT "removal price" rules to which independent producers of ANS crude are subject.

The relevant statutes and regulations require that the WPT "removal price" correspond to the fair market wellhead value of the crude oil. In those instances in which the crude oil is not sold to third parties at the wellhead, the law requires that a "constructive removal price" be used to calculate WPT. The law requires that the WPT "constructive removal price" correspond with a representative field or market price, pursuant to the well-established valuation principles which have governed the calculation of percentage depletion. To ensure the WPT "removal price" and "constructive removal price" determinations adequately reflect fair market wellhead value, Congress has vested the Secretary of the Treasury with the authority to make WPT removal price adjustments when appropriate. These WPT removal price principles are consistent with Congress' intention to impose a tax on the "windfall" attributable to the increase in the wellhead value of crude oil resulting from the decontrol of domestic crude oil prices. Congress perceived the potential for difficulties in WPT "removal price" determinations, and in view of this potential, Congress wisely provided that WPT "removal prices" be determined pursuant to the well-established wellhead valuation precepts which are set forth above, and which must be necessity be calculated on and in consideration of all the relevant facts and circumstances rather than attempting to legislate removal prices. The only variance from these general principles that exists with respect to the WPT "removal price" determination for ANS crude oil is that a monthly average of the ANS "removal prices" must be used rather than using each individual "removal price." Congress adopted this provision apparently to ensure that any significant fluctuations in the costs of transporting ANS crude would not effectively eliminate WPT liability for some ANS crude.

Similarly, the critics' insistence that the Internal Revenue Service commence a WPT audit of the integrated producers of ANS crude oil, WPT liability in general, and intercompany crude oil transfer pricing practices in particular is unnecessary in view of fact that audits of all integrated ANS producers on precisely these issues have been underway since January 1982. ARCO's crude oil transfer pricing policies and WPT "removal price" determination methodologies are in accord with and fully incorporate the well-established tax law principles which govern these determinations.

The allegation that Alantic Richfield Company is using profits from Alaskan crude oil to subsidize downstream marketing operations rather than reinvesting in crude oil exploration and production, is totally contrary to the facts. Our five year capital budget is the largest in our history and one of the most aggressive in the industry. Over 82 percent of this budget will be invested in oil and gas exploration and production.

Within the Gulf Coast market, there are publicly declared market prices, accounting for the vast majority of all transactions. In particular, the publicly declared market prices for West Texas-New Mexico sour crudes cover, large quantities of crude oils similar in quality to ANS crude oil. These crudes are produced, sold, bought, and refined by many companies in a highly competitive market. The laid-in cost of ANS crude oil to our refineries is entirely comparable to the laid in costs of comparable domestic crudes on both the Gulf and West coasts.

Our refining and marketing company pays this market value for ANS crude as well as all other crude oils—whether they are purchased from our producing company or an unrelated company. Thus refining and marketing is buying oil at the market price just as other refiners, large or small. The profits of this operation "stand alone" and represent the financial results of refining crude oil and selling petroleum products. There are no crude oil discounts or rebates between operating units of the Corporation. This is borne out by the fact that we could sell our crude oil to other companies at market price. It would be silly for us to discount our crude oil.

Throughout our total refining system we typically process 630,000 barrels of crude oil per day. Of this total, 350,000 barrels per day is ANS crude. That is only 55 percent of the total crude processed. The restructuring of our refinery and marketing system makes us competitive in any market, and by giving the consumer lower prices and quality products we have been highly successful. Even under a scenario in which Arco had no access to ANS crude, our marketing program would be no different than it is today. We still would have pursued the no credit-low price approach to gasoline marketing for the 1980s.

A number of other complaints have been leveled against us in recent months. We have been accused of purchasing gasoline in the spot market in order to drive up prices and deprive independents of the opportunity to purchase this product. On numerous occasions in the past Atlantic Richfield Company has purchased spot market gasoline in order to balance stocks with demand. Our intent was simply to try to meet demand, not to drive up price or deprive anyone from purchasing spot product.

It has also been alleged that we are allocating product to certain of our customers and providing others unlimited product. This is a misconception. We do not have an allocation program in effect for any customers. We have negotiated contractual volumes with all of our wholesale customers and we are meeting these contractual obligations. Our wholesale price is probably the lowest in the industry, and if we did not have this contract control mechanism in place, a severe drain on our distribution system could occur almost overnight.

We have further been charged with reducing credit terms to our distributors to drive them out of business. Once again, these charges are unfounded. We have reduced certain credit terms which were historically extended to our distributors. These practices were no longer warranted or justified in view of our objective to achieve comparable profitability from our retail and wholesale operations.

It has been said that Atlantic Richfield Company is engaging in a predatory pricing program. Predatory pricing involves the concept of selling at a loss for a short period of time in order to eliminate some or all of your competition. Rather than sustaining a loss or even lower profits, Arco's profit from refining and marketing program has grown. Since the implementation of the credit card elimination phase of our marketing program in April, the profit performance of Arco's refining and marketing operation has in fact, set records. In the second quarter of this year pretax earnings from refining and marketing were $153 million compared to $92 million in the second quarter of last year. In the third quarter, pretax earnings for refining and marketing increased to $277 million—the best operation quarter for this operation in the company's history. These figures indicate clearly that we have not been engaged in any "predatory pricing".

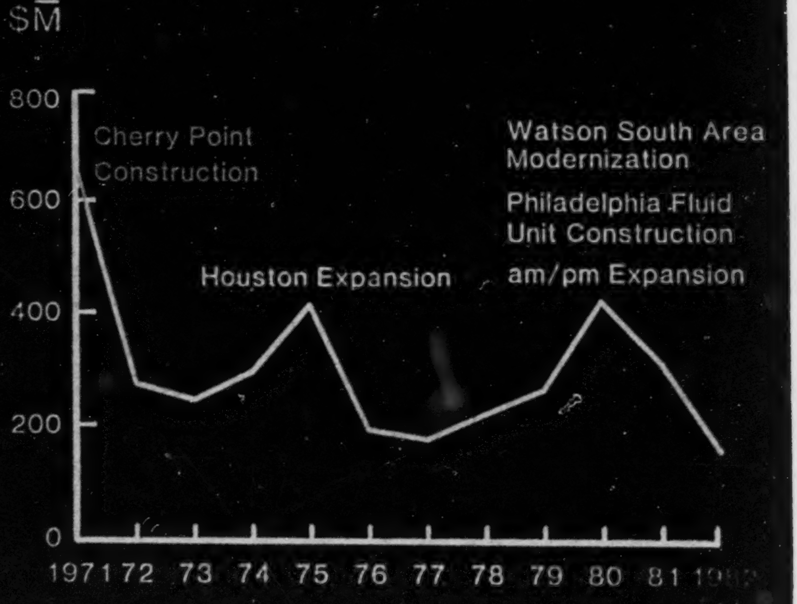
We believe there are some misconceptions as to what is happening to pump prices at service stations, particularly Arco stations. In April we lowered our price of gasoline by almost three cents per gallon reflecting our savings from the elimination of our credit card. Prices since that time have moved up and down reflecting competitive conditions in the marketplace. In certain geographic areas, temporary competitive allowances have been put in place due to localized competitive conditions. These allowances are only put into effect when it has been determined that a significant percentage of our direct competitors have lowered their prices in the area. What is less apparent is that a large number of Arco dealers have opted to reduce their own margins well below the average for dealers in the industry for the purpose of capturing higher volumes and profits. The combination of Arco's nearly three cent reduction and many dealers electing to sell at lowered margins has resulted in pump prices at many Arco stations which are well below their competitors in some areas.

CONCLUSION

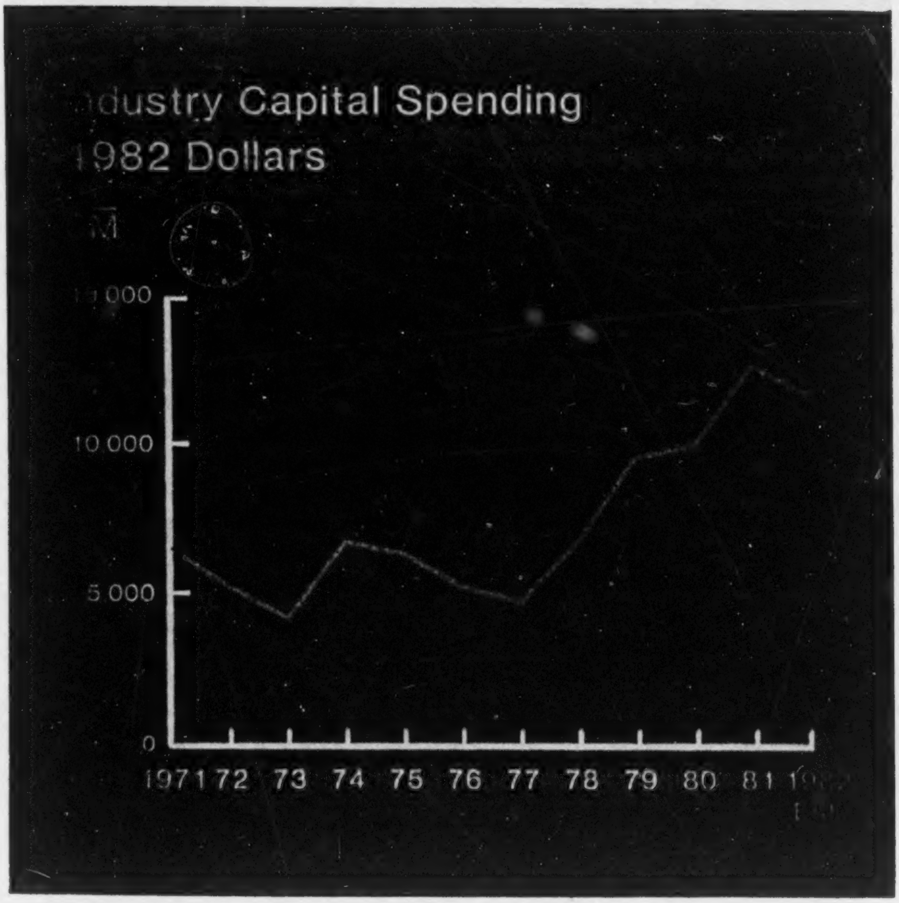
Competition has been restored to the marketplace after nearly eight years of controls. Some segments of the industry appear to be better positioned to succeed, or at least cope, with that environment, than others. Declining total demand and a generally soft economy make the situation even tougher. The inefficient, and there are some, can only be perpetuated through reducing the competition that threatens them. Reduced competition is a subsidy that will be borne by the customer. Therefore, the legislative issue is perfectly and concisely framed. Should the American gasoline consumer be deprived of the benefits of competition to the extent necessary to subsidize any refiner, distributor, marketer or dealer who cannot survive without that subsidy? Arco doesn't think so.

Attachment A

ARCO Capital Spending
1982 Dollars



Attachment B



C-1

League of Women V of the United States 1730 M Street, NW, Washington, DC 20036 (202) 296-177

PRESIDENT
RUTH J. HINERFELD

OFFICERS
Vice Presidents
Dot Ridings
Louisville, KY
Dorothy K. Powers
Princeton, NJ

SECRETARY/TREASURER
Lee C. Carpenter
Issaquah, WA

DIRECTORS
Edith L. Bornn
St. Thomas, VI
Lois C. Harrison
Lakeland, FL
Mary Ellen Ludlum
Columbus, OH
Nancy Neuman
Lewisburg, PA
Helen Patella
Mountaintop, PA
Marilyn Reeves
Laurel, MD
Joan Rich
Atascadero, CA
Ruth Robbins
Sarasota, FL
Florence Rubin
Newton Centre, MA
Fumi Sugihara
College Station, TX

EXECUTIVE DIRECTOR
Harriet Hentges

RECEIVED
APR 05 1982
M. B. EVERS

March 30, 1982

Ms. Myrlie Evers, Director
Consumer Affairs
Atlantic Richfield Company
515 South Flower Street
Los Angeles, California 90071

Dear Ms. Evers:

I was pleased that you wrote to tell me that Atlantic Richfield is working to lower the price of gasoline by ending the use of credit card purchases. ~~I appreciate the difficulty of reaching and implementing such a major policy change and I applaud ARCO for making this important step on behalf of consumers.~~

I regard your letter to me as yet another example of the long-standing friendly relationship between the League of Women Voters and the Atlantic Richfield Company.

Sincerely,

Ruth J. Hinerfeld

Ruth J. Hinerfeld
President

RJH/cdm

Portland, OR OREGONIAN
September 6, 1982

"Cash payment for gasoline often results in a discount. That's fair and long overdue. Those who choose to pay by credit card can cough up the extra three or four cents a gallon. Big Oil, as well as the independent gas dealers, are acting in the best interest of the consumer. ARCO a division of Atlantic Richfield, started the credit card vs. cash war in April by refusing to accept ARCO credit cards..."

"But the cash-credit alternative is a boon to persons who dislike the additional costs off credit cards when they aren't paying with plastic."

Clinton, Iowa HERALD
September 2, 1982

"After becoming a nation of credit buyers, Americans now are turning away from plastic money in many areas---and saving money to boot.

Atlantic Richfield is the precedent-setting company that was first to do away with credit cards and use the savings to slash gasoline prices."

Olympia, WA DAILY OLYMPIAN
August 18, 1982

"ARCO's experience so far indicates that customers are willing to exchange the convenience of credit for savings by paying cash. Until interest rates come down, at least, it might profit other consumer industries to learn from this. By promoting cash sales at a discount, they can reduce prices and the cost of doing business, particularly interest charges.

It is one place where consumers can fight inflation."

Riverside, CA Enterprise
September 28, 1982

Atlantic Richfield Co. started the trend earlier this year when it announced it was ending its credit card program in favor of selling gasoline, at lower prices, for cash.

....These days that almost constitutes and old-fashioned gas war. If it lasts, motorists---just as in the good old days---are likely to be the beneficiaries."

Forest City, AK TIMES-HERALD
May 11, 1982

"ARCO's move is one which will help the middle and lower income people who don't have a credit card for all occasions. Hopefully, other oil companies (and other businesses) will take ARCO's lead. Maybe cash purchases won't become extinct after all."

Watsonville, CA REGISTER
October 1, 1982

"ARCO was the first to take the plunge. Plagued by high interest rates that raised the cost of its credit program, falling gas consumption, and increased competition from the independents which undersold it at the pumps, ARCO abandoned its credit business altogether. It began selling gas for cash only, at prices rivaling those of the independents. If the net result is to force more careful budgeting and financial discipline by individuals and less of the unlimited credit seductions of retailers, than maybe we should welcome the switch."

Oceanside, CA OCEANSIDE BLADE
September 10, 1982

"When gasoline sales began to slow because of price increases and there was a glut of oil and gasoline, the Atlantic Richfield Co. (ARCO) decided to do something to stimulate sales. What they did was to do away with all credit cards and reduce the price to cash customers. --The cost of the credit card is in the price. And that is totally unfair to the customer who forks out cold cash for his purchase, whether it be gasoline, jewelry or clothing."

Albany, OR DEMOCRAT-HERALD
March 4, 1982

"...the ARCO decision at least is an interesting experiment in getting back to pay-as-you-go, a prudent strategy in most cases of consumer finance. We need not worry too much; after all, there was life before credit cards."

Gresham, OR OUTLOOK
August 7, 1982

"....ARCO's rationale was that its customers would gladly trade the ease and convenience of a credit card for a cheaper price. A few years ago, ARCO might have guessed wrong but all indications at present point otherwise.

The sales gains reported by ARCO may or may not be permanent; that remains to be seen. But so far, ARCO is ahead of the game. Someone in their marketing organization guessed right."

D-1

Honorable Berkley Bedell
Washington, D.C. 20515

November 17, 1982

Dear Mr. Bedell

As the Chairman of the Committee on Small Business I am sure that the opinions of a small businessman such as myself would be appreciated. The fact that you are also a member of the sub-committee on energy-related matters is especially important to myself, since I am a partner in a ARCO mini-market station in San Diego County, California. Issues on gasoline are important to me because it is my livelihood, and thus is the reason for my writing you.

Regulation is the issue that I wish to discuss, since it has come to my attention that your committee may be considering regulating the automobile gasoline industry again. To me this would be a grave mistake and hopefully the opinions that I will express here will enlighten you as to our situation.

When Atlantic Richfield was able to eliminate their credit cards, we were able to push forward greater changes for both the benefit of the public as well as ourselves. As I understand it, with price controls this elimination would not have been possible.

Along with the ARCO card elimination came some beneficial results. Gasoline prices were drppped appreciably. This price drop allowed our customers to save money in a then continually expensive commodity. Since that time our prices have lowered and have forced other companies and stations to compete with us. This free enterprise competition has lowered the price of gas for the customer at the pump.

Since we were able to lower our prices our gasoline volume has jumped from 150,to approximately 300,thousand gallons. Although I realize this is not a direct result of deregulation, it is possible to trace this to the elimination of credit cards at our ARCO station which again depended, as I understand, on the regulation issue.

Lastly, the deregulation of gasoline has also increased our sales within our mini-market. Since our gas prices are lower, more people are coming into the store which promotes our. business.

All in all, the deregulation has been very good for our business. As a small businessman I feel that regulation of the automobile gasoline had limited our expansion within our own station. Since deregulation, ARCO has gone through with some unprecedented ideas which have gone in a dominoe effect to ensure the benefits for both the public as well as ourselves.

This issue is important to me and I feel that automobile gasoline regulation would hurt my business and others like it. To promote the growth of small businesses in the gasoline industry, regulation should be the last resort of our nations leaders.

Sincerely

John S. Zeigler

jsz/wrz

Zeigler & Son, Inc.
6110 Mission Gorge Road
San Diego, California 92120

D-2

Linda S. Troncone
Lin's Arco
6801 Reseda Blvd.
Reseda, Ca 91335

Nov 16, 1982

The Honorable Berkley Bedell
Chairman, Committee on Small Business
Subcommittee on Energy, Environment, and
Safety Issues Affecting Small Business
Washington, D.C.

Dear Senator Bedell

As a dealer of an Arco station, I am writing to express my concern with governments' interference in the oil industry as it affects my business.

Competition in the free marketplace is best because consumers are offered lower prices. Those who can offer these low prices -- the efficient marketers are in turn rewarded by the consumers' patronage.

Due to my competitive prices, my gas sales have always been good. And with Arco's loss of credit cards, which in turn, lowered our prices even more, my volume and profits are even

[illegible]

Should government intervene and restrict free enterprise in the gasoline market and thereby upset competition, my business would be threatened.

Competition is vital to my business. I am asking you to preserve this condition as it exists in the gasoline market today by keeping government out in the future.

Sincerely,
Linda S. Troncone

D-3

SAM I. OKAMOTO
OKAMOTO'S AM/PM MINI/MKT
7370 LA TIJERA BLVD
LOS ANGELES, CALIF.
90045

HON. BERKELEY BEDELL
CHAIRMAN:
COMM. ON SMALL BUSINESS
SUB-COMM ON ENERGY ENVIRONMENT
& SAFETY ISSUE AFFECTING
SMALL BUSINESS
WASHINGTON, D.C.

DEAR SENATOR BEDELL:

DECONTROL OF THE PETROLEUM INDUSTRY HAS MADE IT POSSIBLE FOR A SMALL BUSINESS, SUCH AS MINE, TO AT LEAST COMPETE WITH THE SO-CALLED INDEPENDENT GAS CHAINS, THAT JUST ABOUT HAD ME OUT OF BUSINESS. IN NO WAY, COULD I COMPETE ON A FAIRLY EQUAL BASIS WITH THEM.

WHAT IS AN INDEPENDENT SMALL BUSINESSMAN. ANYWAYS?

I, FOR ONE, ALWAYS THOUGHT, THAT I WAS A SMALL BUSINESSMAN. I INVESTED MY SAVINGS, WORK HARD & LONG HOURS TO MAKE A HONEST LIVING, DO MY BEST TO SATISFY MY CUSTOMERS NEEDS.

THE INDEPENDENT COMPETITOR

(CONT)

OPENS UP HIS CHAIN STORE, HIRES A MANAGER, ETC. (NO INVESTMENT ON THE PART OF THE MANAGER) THEN UNDERCUTS PRICES, & VOLUMES HIS PRODUCTS.

THAT IS NOT MY CONCEPTION OF A SMALL BUSINESS, NOT AT LEAST THE GOOD AMERICAN WAY, THAT BUILT THIS GREAT COUNTRY!

I WOULD APPRECIATE ANY REPLY, REGARDING YOUR IDEA OF A SMALL BUSINESS. THANK YOU!

Sincerely

Sam D. [illegible]

D-4

JOE RUSPANTINI & SON
ARCO SERVICE
Repairs - Mechanics on Duty • N.Y.S. Inspection Station
Towing — Phone 724-8611
Front & Franklin Streets • Binghamton, N. Y.

Honorable Berkley Bedell
Chairman, Committee on Small Business
Sub-committee on Energy, Environment and
Safety Issues Affecting Small Business

Dear Sir:

After twenty-eight years as a Service Manager with General Motors products, having first-hand experience with automotive equipment and management, I decided to resign and open up my own business.

After my resignation, I contacted many people and companies, but found their rent requests to be much higher than I had cared to pay; after searching a while longer, I answered an ad from ARCO concerning the lease of a gas station, which I am presently enjoying. My business is doing very well with thanks to the programs available to dealers, like myself, from ARCO representatives.

The most productive times came after ARCO decided to drop the credit card, as well as the price of gasoline. With these low prices customers flocked in and my business started to climb. The ARCO representatives said that this change would work for my business and build up the volume. This can readily be seen by my gasoline sales; they have increased by over seventy-five percent since we have introduced the cash only and self-service programs. My profits have increased by having the customers pump their own gas and enjoy the money that they have saved in the process.

As far as the rent program is concerned, I find it to be very fair for what we are enjoying in the property and location.

ARCO has been very staight forward and fair with me and has broken no promises. Compared to many of the other people I have been involved with, I will have to say that ARCO has very high standards and respect for all of their dealers.

This past year has been exciting for me due to the high volume of gasoline sold; in the past ten months we have sold over one million gallons, as compared to last year, having only sold 360,000 gallons.

Sincerely,

Joseph J. Ruspantini

Joseph J. Ruspantini

JJR:jer

D-5 11/17/82

Honorable Berkley Bedell
Chairman, Comm. on Small business
Sub Comm. on Energy, Environment & Saftey Issues
effecting small Business

Dear Mr. Bedell

I have been an Arco dealer for fifteen years, in Barrington Rl. Since the discontinuance of arco credit cards my business has increased at a rapid rate. Example of this could be the month of july 1982 verse october of 1982 july 120,000 october 200,000 a sizable increase in business. = More volume
= More inside work in the bays
= More traffic at fast serve shop
= more opportunities than ever before to increase my profit structure in all aspects of my business.
It now puts me in a postion to greater benefit my self & my partner Jim Riccio. In all aspects of business potinal.

SA[illegible] [illegible]CO
227 [illegible] ROAD
BAR[illegible]

Sincely Yours.
David G. [illegible]

D-6

November 16, 1982

Honorable Berkley Bedell
Chairman Committee on Small Business
Subcommittee on Energy, Enviroment
and Safety Issues Affecting Small Business

FROM: Award Tune Up, 174 Squire Rd., Revere, MA. 02151

Dear Honorable Berkley Bedell:

Recently, my franchising representative asked me if I thought Arco's decision to eliminate credit cards was a benefit or a detrement to my business. My answer to him was "you have got to be kidding me! How can you ask such a stupid question? "Don't get me wrong I wasn't trying to insult my representative, but I really thought he was kidding me. The reason why I though he was kidding me is because my sales, with the elimination of credit cards, went from 50,000 gallons per month at an 8¢/gallon margin to 300,000 gallons per month at a 5¢/gallon margin. Nobody has to be a genius to figure out how much additional gross profit per month I have received through Arco's decision to eliminate credit.

The only thing I can say is that I have been with the oil companies for years. In all my years I have never been so positively affected by any one decision. In the past, oil companies have offered rent deals and/or other means to enable their dealers to become competitive within their market area. The decision to eliminate credit cards surpasses all of these other incentives combined, because the elimination of the credit has enabled my location to be the price leader in my market area, mostly all the time price is what the customer wants, and thats why Arco's decision has helped me tremendously.

Sincerely yours,

Philip J. Iudice

D-7

ROGER'S ARCO SERVICE
246 State Road
No. Dartmouth, MA 02747

Honorable Berkly Bedell
Chairman Committee on Small Business

Dear Sir:

I am the owner of an Arco gasoline service station located in North Dartmouth, Massachusetts. I have been in business there for approximately 12 years. I have to say I've done well during the past 10 years. We have had our ups and downs but on the whole it has been good. Last April 1982 when the oil company was considering giving up their credit cards, I was a little nervous. Twenty-five percent of my business was purchased on the credit card and I believed that if I had lost that twenty-five percent of business it would have hurt me, not to the point of putting me out of business, but enough to add one more headache. I asked people at the pump if they would go elsewhere with no credit here. Some said yes, some said no. (charge customers) I knew I had to take the chance. As I thought more and more about it I figured that if the price of gasoline would be four to six cents cheaper without credit cards, it would have to work out! People today are price shopping with or without the credit card, it makes no difference.

Well we took the chance. I mean I also had a choice to keep the higher price at the pump and issue my own credit system, along with two major bank cards, or go cash only. I chose cash only and took six cents off the pump. Within one week my gallonage per day doubled, and within two months it tripled. At the present time it has quardripled. In my opinion giving up the credit system has improved my business 200%. In doing business with cash only I have done the following:

a. Gave better prices to the consumer.
b. Increased my profits on a volume basis.
c. People tell me they budget their money better and have no large monthly gasoline bill to pay.
d. Eliminated bad credit.
e. Do to this program I was able to establish a good gasoline business.

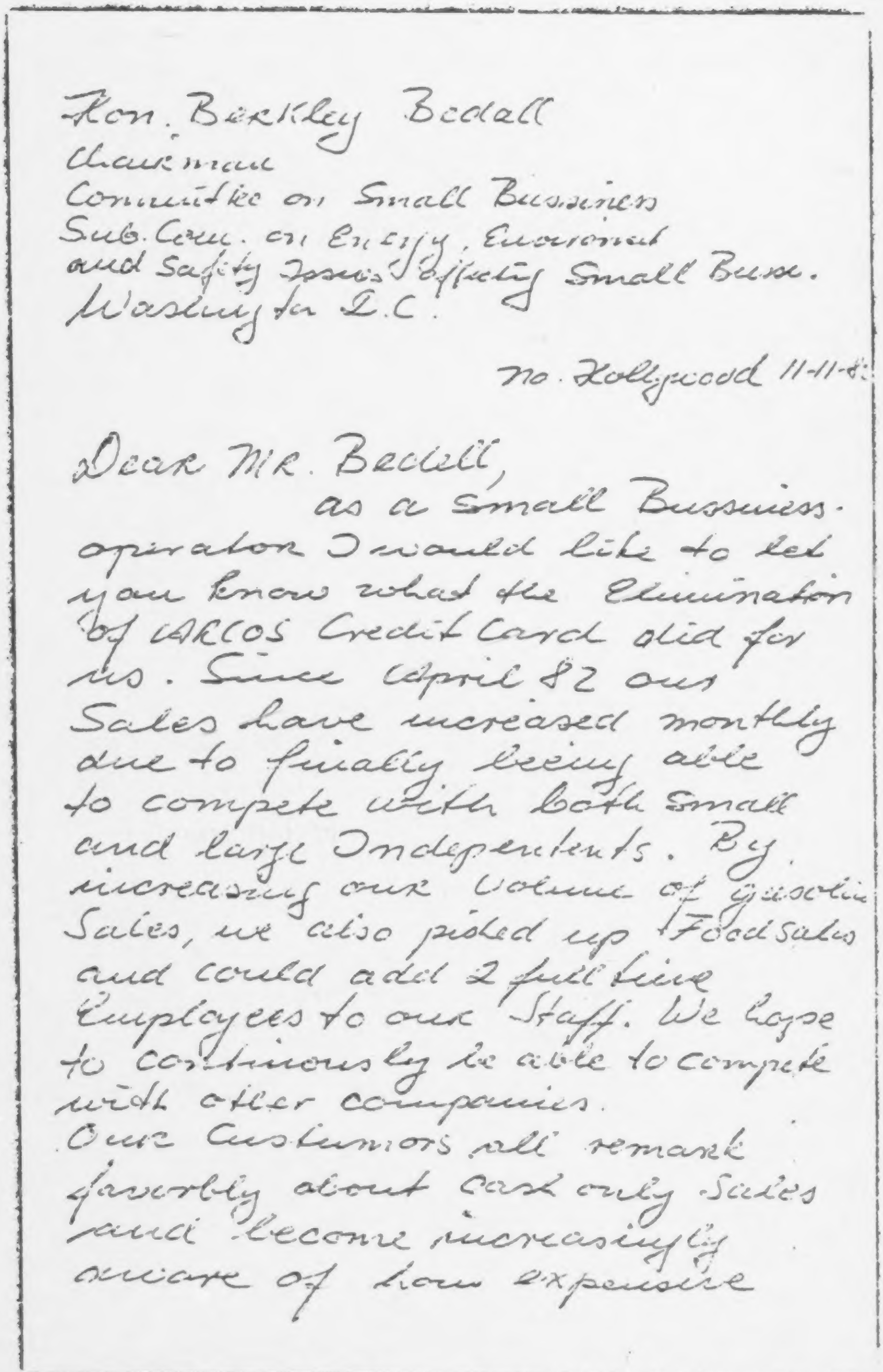
Sincerely yours,

Roger A. Craveiro

Roger A. Craveiro,
Proprietor Roger's Arco Service

RAC:cac

D-8



Hon. Berkley Bedell
Chairman
Committee on Small Bussiness
Sub. Com. on Energy, Environmental
and Safety Issues affecting Small Buss.
Washington D.C.

No. Hollywood 11-11-8

Dear Mr. Bedell,
as a Small Bussiness-operator I would like to let you know what the Elimination of ARCOS Credit Card did for us. Since April 82 our Sales have increased monthly due to finally being able to compete with both small and large Independents. By increasing our Volume of gasoline Sales, we also picked up Food sales and could add 2 full time Employees to our Staff. We hope to continuously be able to compete with other companies.
Our Custumors all remark favorbly about cash only Sales and become increasingly aware of how expensive

Credit really is. They seem to appreciate ARCO's Step to eliminate the Credit card. Needless to say so do we!

Respectfully.

Helga J. Coddingt

AM-PM-Store 1640
5158 LAUREL CANYON
NO. HOLLYWOOD
91607
213-506-6541

D-9 11/13/82

Honorable Berkley Bedell
Chairman, Committe Small Business
Sub Committe on Energy, Environmental Safety,
Issues Affecting Small Business
Washington, D.C.

Dear Sir:

After the deregulation of the oil industry a while back I have found that my competitive position in the market place has strengthened.

Having been a dealer with a major oil Co. (ARCO) for many years, I have been slowly suffering a loss of business to the independent market. Since April "82" this trend stopped completely with the elimination of Arco's credit card. This move helped me considerably, giving me at last the competitive edge which was necessary for the survival of my small business, in a service station.

Please, lets not return to oil industry control.

Yours Truely;
Vito R. Matallgo
Arco Service Station dealer
El Cajon, Calif.

AM/PM MINI MARKET
RIDGE AND LEVERINGTON AVE.
PHILA. PENNA. 19128

D-10

Nov. 22, 1982

Honorable Berkley Bedell
Chairman
Committee on Small Business

Sam Miluzzo, Owner
AM/PM Mini Market
Phila. Penna.
215- 482 4325

Dear Mr. Bedell,

I have been an Arco dealer for the past 10 years and have seen many of my fellow Arco dealers go out of business. The majority of these failures was due to price ineffectiveness caused by large chain and distributor operated stations selling gasoline at prices lower than we were paying for it. During the past year, Arco has met it's dealers needs by discontinuing credit cards and implementing an aggressive advertising campaign that has worked extrenly well in the Phila. area that has an over-abundance of independent stations.

My volume has increased from an average of 80,000 gallons per month to an average of 265,000 gallons per month. Of course I am very pleased with the increase in business but the people that benefit the most are my customers that finally greet me with a smile instead of a sour look on their face.

Cries of foul play by independents should fall on deft ears as competition benefits the public and small businessman. I speak for a large part of the Phila. area Mini Market operators and it would be an unjust burden not to allow Arco to continue it's pricing to Arco dealers to allow them to be price effective. The real injustice would be to the general public who would lose the right to purchase gasoline at the lowest possible price available.

Your kind consideration to the general public and all hard working Arco dealers would be greatly appreciated.

Sincerly, Sam Miluzzo

Sam Miluzzo
Home: 215 969 5387

D-11

NOVEMBER 22, 1984

THE HONORABLE BERKLEY BEDELL
CHAIRMAN
COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON ENERGY ENVIRONMENT AND
SAFETY ISSUES AFFECTING SMALL BUSINESS

DEAR MR. BEDELL:

IT IS MY UNDERSTANDING THAT YOUR COMMITTEE IS NOW HOLDING HEARINGS ON THE OIL INDUSTRY AND THE SERVICE STATION OPERATIONS.

I AM AN ARCO DEALER WHO HAS PROSPERED GREATLY SINCE THE ELIMINATION OF CREDIT CARDS. THIS ENABLES ME TO BUY FROM ARCO AT A LOWER TANKWAGON PRICE. PREVIOUSLY THE INDEPENDENTS WERE ABLE TO PRICE MORE EASILY AND WE WERE NOT ABLE TO COMPETE. NOW, COMPETITION IS "EVEN". WHOEVER CAN NOW RUN THE MOST COST EFFICIENT RETAIL FACILITY WILL CAPTURE THE MARKET IN THEIR AREA.

I WANT YOU TO KNOW THAT I PROVIDE A COST EFFICIENT FACILITY; ENABLING ME TO GIVE THE CONSUMER TWENTY-FOUR HOUR SERVICE, AS WELL AS A CLEAN EFFICIENT OPERATION. PART OF MY ULTIMATE SAVINGS IS PASSED OFF TO THE CONSUMER, ENABLING ME TO RETAIL LARGE VOLUMES OF GASOLINE. MY FACILITY PRIOR TO CHANGE

PUMPED 100,000 GALLONS PER MONTH, AND NOW IS OVER 400,000 GALLONS.

THE CURRENT ARCO PROGRAM BENEFITS THE MAJORITY OF DEALERS. THE PROGRAM IS WORKING.

I WOULD NOT LIKE TO SEE ANY NEW LEGISLATION WHICH WOULD RESTRICT MY ABILITY TO COMPETE. THIS WOULD ONLY RESULT IN HIGHER PRICES TO THE CONSUMER

SINCERELY,

Morton Appelbaum

AM PM MINI MARKET
MERTON APPELBAUM
13000 BUSTLETON AVENUE
PHILADELPHIA, PENNA. 19116

215-676-0724

D-12

LOU DEGEORGE
ARCO SERVICE
12TH AND VINE STREETS
WA 2-9985
PHILADELPHIA, PA. 19107

Nov 22. 1983

Mr Bedell:

I am writing this letter in accordance with the upcoming hearings regarding ARCO's recent credit card policy. Since Arco has dropped credit cards my service station has become a more competitive gasoline retail outlet. My gallons have increased almost 15% over a sixth month period.

We notice new customers coming in every day and we are able to sell and service these cars with other ARCO products, which means more profit for myself and my employees.

In a highly competitive industry as we are in: I think ARCO's policy of dropping credit cards is a major step forward in better customer relations, and better dealer relations.

In my opinion, abandoning this policy would be a great step backward for Arco and its dealers

D-13

Rossi's Arco Service Center
STREET & HULMEVILLE ROADS · BONSALEM, PENNSYLVANIA 19020 · (215) 245-9912

The Honorable Berkley Bedell
Chairman
Committee on Small Business

November 22, 1982

Dear Mr. Bedell,

I understand you are holding hearings on oil company and service station operations. As an ARCO dealer, ARCO's elimination of credit cards has helped me a great deal. I can now compete more effectively with the unbranded outlets and distributor operated stations.

My volume has increased 100,000 gallons a month since elimination of the credit card. Most important, my profits are also up and I would hate to see anything to change this. My old customers

As well as my new customers are very happy with my competitive price and ARCO is working in the best interest of their dealers with their programs. I want to see them continue.

Sincerely,
- Joseph Rosai

D-14 Nov 17, 1980

Hon. Berkley Bedell
Chairman, Commission on Small Business
Subcommittee: Energy, Environment + Safety Issues
Effecting Small Business

Re: Effect of Arco Marketing Practices on
Small business; specifically, my business.

Dear Sir;

Atlantic Richfield Co. marketing policies are extremely innovative + creative. As far as my business is concerned, these policies have made it possible for me to offer to the public lower energy costs through cheaper gasoline. An atmosphere has been created in which per unit costs can be reduced + passed on to the consumer

As a small businessman, my primary concern is the maintenance of a profitable business. My net profit picture is improved in this atmosphere + the efficiencies that it creates. Therefore, the present + future viability of my business situation is maintained.

In summary, I think Arco should be commended for American entrepreneurship at the highest corporate level.

Sincerely
Harold D. Egan
EGAN'S ARCO
711 MAIN AVE
NORWALK, CT. 06851

D-15

BUD LORD'S ARCO SERVICE
666 MAIN STREET
E. GREENWICH, RHODE ISLAND 02818

November 22, 1982

Honorable Berkley Bedell
Chairman, Committee on Small Business
Sub Committee on Energy Environment
and Safety Issues affecting Small Business
Washington, D.C.

Dear Mr. Bedell:

It is difficult to put down on paper my impression of the relationship between a major oil company, Atlantic Richfield, and a small service station retailer, Bud Lord's Arco. This is a relationship that has spanned 35 years, during which time there were many drastic changes in the retailing of petroleum products. Many of these modifications have come in the last ten years.

One major change was the discontinuing of the credit card by Atlantic Richfield. The company felt this was a drain on their resources and a bookkeeping nightmare for many of their retail dealers. As one of these dealers, I must confess I was very apprehensive about this change because 30% of my gross business was by credit card. However, after implementing this change, Atlantic Richfield was then in a position to reduce the tank wagon price to dealers, giving us more competitive position price-wise.

Most Arco dealers increased their gasoline business by 30 to 50%, improving their cash flow and eliminating the problem of charge backs from bad credit cards. Discontinuing the credit cards has enhanced our position in the market place and brought in many new customers.

I feel the change has been a benefit to most retail Arco dealers. Atlantic Richfield Company and the dealer network which they supply are trying to compete and survive in a very competitive market and the decision to offer lower prices and no credit cards has definitely been a benefit to most retail dealers.

The company has sincerely tried to bring about only those changes they feel are necessary, but changes in policy or marketing concepts are not always accepted by everyone. I personally feel that Atlantic Richfield has tried to implement changes as smoothly as possible, with the least disruption of normal business procedures, and so that the dealers will have the least possible financial injury during the time the change is being implemented.

I have been associated with Atlantic Richfield for 35 years, during good times and bad, and I feel that my growth in the market place can be attributed to hard work on my part and cooperation from the company in everything that we have tried over the years to improve our image and position in the community.

Yours truly,

George E. Lord Jr.

George E. Lord, Jr.

Mr. **Bedell**. Mr. Hiler?

Mr. **Hiler**. Were you here yesterday, by chance?

Mr. **Babikian**. No, I wasn't, Congressman.

Mr. **Hiler**. Some folks that have an association with Arco were quite strong in. I don't know whether denouncing the company or not is the proper word to use, but they certainly were not very complimentary. One of the things they were not complimentary of was the am/pm facilities that you have, saying that there are a lot of strong arm tactics used and preferential price treatment given on gasoline to people that go into an am/pm-type operation. Could you just describe how you go about getting a branded dealer to think about going into am/pm.

Mr. **Babikian**. Congressman, we have approximately 700 am/pm locations throughout the United States. As the first step in the process, we have a very detailed computer model that determines whether a given location has the potential to make it as an am/pm. If it does, we present those findings to the dealers, and make a franchise presentation to that dealer. Whether he becomes an am/pm dealer or not is strictly up to him.

We have many locations that qualify. As am/pm locations they would be quite successful, but the dealer doesn't want to convert to am/pm, he is content with his current operation, and he has every right to remain a conventional dealer.

I will add that we have had very good success in converting locations to am/pm because of the success of the am/pm operation. It is very profitable. Just for the sake of some comparison, our average am/pm dealer on the west coast made about $9,000 per month during the summer months, and on the east coast it's about $7,000.

Those are very healthy profit numbers, and that is after paying us a fair rent on that property. So when you have an operation that is as financially successful as that, dealers who have locations that qualify and want to make the change don't need a great of urging. There are some dealers that want to continue with the operation they have, and they have every right to do that.

Mr. **Hiler**. Do you give preferential price for the gasoline to folks that go under the am/pm type operation rather than staying at a full-service?

Mr. **Babikian**. Absolutely not. What we have established throughout the United States are price zones in which all Arco dealers that are in competition with each other are placed, and every Arco dealer in that zone gets exactly the same price.

Whether he is a conventional dealer, whether he is a distributor's dealer, whether he is a contract dealer, or whether he is an am/pm dealer they get precisely the same price.

Mr. **Bedell**. Will you yield on that?

Mr. **Hiler**. Yes.

Mr. **Bedell**. How many zones do you have?

Mr. **Babikian**. In the United States we have some 800 zones, give or take 50.

Mr. **Bedell**. Have you changed them in the last year?

Mr. **Babikian**. Well, they are constantly being changed because of stations dropping out of the Arco portfolio or stations that we may add. These changes are ones that are determined essentially—and approved by our legal department—we have to make sure that what we include in our zones are all Arco stations that compete with each other. This is kind of a dynamic situation where Arco stations come in and out of zones, when they brand or debrand, then we make changes.

Mr. **Bedell**. Thank you, Mr. Hiler.

Mr. **Hiler**. Another area that was the subject of some amount of discussion yesterday had to do with the lease arrangements and the lease contracts and the amount of rent. How do you go about determining the rent that you will charge on a facility?

Mr. **Babikian**. Let me just take a minute to talk about a basic change that we see taking place in the industry because I think that is key to answering your question.

In the past, what we have had, and I think other companies have had, has been what we call a dealer tankwagon price, a DTW, that has been established at a high level. We have had a wholesale price down at a low level, at which we sold to branded distributors, that we sold to unbrandeds, and the general wholesale market.

In this dealer tankwagon price were what I call packages of goodies. The credit card was one of the goodies that was in the dealer tankwagon price. Real estate costs were in this tankwagon price. The advertising, the sales promotion, a lot of other things that were performed for the lessee class of trade, for the retail class of trade, were in this high dealer tankwagon price. What Arco has done is strip these goodies out of that tankwagon price, and we have brought the DTW level down to a midway point.

The first move in that direction was the elimination of our credit card. Our credit card cost us $73 million. We simply took our branded volume, divided it into that number. It came out to 2.8 cents per gallon, and we lowered the dealer tankwagon price 2.8 cents a gallon. We brought it down very close to the lower wholesale level.

The next step in that process was to make certain that our lessee dealers began the process of paying an adequate rental. In the past, with the dealer tankwagon structure, with this wide differential between wholesale and retail, our lessee dealers weren't able to pay a fair rental on the property that they were leasing from us. The dynamics of the marketplace and the dealer tankwagon price structure that we had prevented us from collecting a fair rental.

Our average service station in the east coast is worth something like $250,000. Our average service station on the west coast is worth around $350,000. The rent that we are putting into effect is based on the fair market value of those properties, or the replacement value of them. Even if we get a 10-percent return, if we get $30,000 per year from a location, which is about what we will be getting when we achieve the economic rent that we will be placing in effect over the next 3 years, you have to deduct from that taxes, maintenance, and depreciation. We are down in the low twenties in terms of a rental that we are getting on a property that is worth in the east $250,000 and $350,000 in the west. I don't think that is any kind of major return on a before tax basis on an investment of that value. What we in essence have said to our lessee dealers—which are the lifeblood of our company I might add—is that from now on we are going to price you competitively with the wholesale market, but you are going to pay a fair rental on that property, and we have given you the program that enables you to do just that.

I said that our average lessee dealer has improved his profitability since we implemented this program, in spite of the fact that we have made two rental increases—that is after those rental increases. Our am/pms, even after these rental increases, are still averaging almost 50 percent more profit than they were before we did all of this. It would be patently ridiculous, to use that phrase again, for us to put a rental system in effect that would drive our dealers out of business. We are a dealer-oriented company.

Mr. **Hiler**. How many dealers do you have and how many Arco-owned stations?

Mr. **Babikian**. We have somewhere between 6,000 to 7,000 Arco dealers across the United States. We have around 2,600 of what I call lessee stations. These are the ones that the rental increase that you referred to would apply. Some of these dealers actually will get a decrease, I might add.

Mr. **Hiler**. How many stations do you have that are company owned and operated?

Mr. **Babikian**. We have approximately 400, of which about 150 are questionable operations. They are ones that we have taken over because either we couldn't find a dealer or we felt what we would do is try to take the volume up but we are not sure whether the location has got the potential to make it. Generally we keep these stations for 4 months, and if they don't perform in that time period, if we don't think it is good for us, then we close the location.

So we will probably always have around this number. For instance, when we put the rental in effect that I am talking about, if a dealer leaves a location because he can't pay that rental, we cannot run that station on company operation.

We may take it over and run it temporarily for no more than 4 months, and that is to build the volume up so we can get a good dealer for the location, an attractive facility for the dealer. If we don't find a dealer for that station, if the volume doesn't come up, then we will close it. We will not continue that service station on a company operation.

To answer your question, we have 260 to 270 permanent company operations across the United States.

Mr. **Hiler**. I yield back, Mr. Chairman.

Mr. **Bedell**. Thank you very much.

Mr. Babikian, in your testimony you talked I thought in quite a complimentary way about how you have been doing things and how things have been going for Arco. I take it you are pleased with the things are working out?

Mr. **Babikian**. Yes.

Mr. **Bedell**. I would assume from that that you have no big plans about major changes in the way you operate, then, during the next year or two? Is that right? If you are happy with what you are doing——

Mr. **Babikian**. No, I think that is correct, Mr. Chairman. I would say that we are quite pleased with what is happening, and the kind of changes that we will have will be just fine-tuning types of changes.

Mr. BEDELL. Has your volume increased or decreased?

Mr. BABIKIAN. Our overall volume has increased about 15 percent and our retail volume has increased about 50 percent.

Mr. BEDELL. Is that in gallons?

Mr. BABIKIAN. Yes, in gallons, over the previous year.

Mr. BEDELL. What have prices done?

Mr. BABIKIAN. Our prices have gone down since the past year.

Mr. BEDELL. So the revenue is about the same? Or is it up or down?

Mr. BABIKIAN. No, I would think it is up on balance. I haven't got the figures, but our profit levels are up considerably. Our third-quarter profits—now I am talking about the refining marketing sector, are not subsidized by any other operation within Atlantic Richfield Co. These we consider very, very appropriate profit numbers. In the third quarter of this year, the quarter just ended, we set an alltime profit record of 24 percent from the same period 1 year ago in the refining marketing sector.

The program that we have implemented has resulted in lower prices for the consumer, more profit for our dealers and more profit for us, also.

Mr. BEDELL. On your Alaska crude, has that volume increased or decreased in the last year?

Mr. BABIKIAN. I think it has gone up. We get about 350,000 barrels a day of North Slope crude. The Kuparuk field came on. The production from Kuparuk has gone up.

Mr. BEDELL. Has the price changed up or down?

Mr. BABIKIAN. Well, we have raised the price of North Slope crude in this time period. We base the price of North Slope crude on its value in the Gulf Coast market, which we think is a fair, representative market.

Mr. BEDELL. That is the price at the wellhead?

Mr. BABIKIAN. Yes.

Mr. BEDELL. In testimony we had from someone yesterday, they gave us a table that said that in the 9 months through September 30, 1981 compared to 1982, that the windfall profits tax Arco paid had been reduced from $1.125 billion to $650 million.

The obvious question is if the volume has increased and the price has stayed the same, if those figures are correct, what is the reason that the Government tax revenue would have been cut by nearly $600 million?

Mr. BABIKIAN. Crude prices have gone down during the past year all over the United States.

Mr. BEDELL. But your Alaska crude you said was the same price.

Mr. BABIKIAN. No; I didn't say that. I said there have been changes in our Alaskan crude price, also. Do you have some numbers on that?

Mr. BEDELL. Well, maybe you didn't mean to. I think you said that. Maybe you ought to correct that.

Mr. BABIKIAN. I am sorry, then, if I said that. I said our Alaskan crude price has had price changes in the past year.

Mr. BEDELL. How much has it changed at the wellhead?

Mr. BABIKIAN. I am not sure. Dick, maybe you can answer that.

Mr. MORSE. Mr. Congressman, for 9 months, as reported in our third quarter report, indicated that the average price for the 9 months of 1981 was $23 a barrel for North Slope crude and for the comparable period of 1982 it was $19.12, so there had been nearly a $4 a barrel decrease in the price of crude oil.

Mr. **Bedell**. Has your transportation charge from the wellhead to the refinery, has that changed in that 12-month period?

Mr. **Babikian**. Our transportation charge from the North Slope on the vessels that we use is based on the USFRA rate. That is a published rate. It represents the market value of moving crude. As a matter of fact, we charter our ships to other oil companies and charge that rate. Now, that is a fluctuating rate. Whether it has gone up or down, I don't know, but it is a published rate and that is what we use. I am sure it is not static.

Mr. **Bedell**. That does not address my question. The suggestion was made that you are overcharging for your transportation charges and undercharging for your crude in Alaska, that you therefore are able to avoid what would otherwise would be a legitimate excess profits tax.

Six hundred million dollars is one heck of a lot of money for the Federal Treasury. We worry and worry about educating our students and everything else. If that is happening, I think it is very important that we should know it.

What you are saying is that you have lowered the price—you set your price, I assume, on your North Slope crude, is that right?

Mr. **Babikian**. What we established for the North Slope crude price the prevailing price for comparable crude in the gulf coast. The price of all crudes in the past year has gone down. What ANS represents is the value of a comparable crude, a west Texas sour crude in the gulf coast, which is of comparable quality, the west Texas sour crude is a crude that is traded in very abundant quantities, has a definite market value, and that is the value we place on it. When west Texas sour goes down, we go down with our crude prices.

Mr. **Bedell**. So I would assume that the transportation charges, which you charge yourself, from the wellhead to the refinery at this time and what they were a year ago would be available to the committee. Is that correct?

Mr. **Babikian**. Sure. I don't know what they are exactly except that, as I said, it is a published rate that I am sure varies from time to time.

Mr. **Bedell**. I think without objection I would like to ask that the committee be given those figures.

Mr. **Babikian**. That is fine.

[See appendix I, exhibit 1.]

Mr. **Bedell**. Did you have a point?

Mr. **Morse**. Well, Mr. Chairman, I just wanted again to refer to that annual report in which the lower 48 prices for domestic crude on that same period of time had dropped $4.27 a barrel, which in fact is a greater reduction in price year to year than North Slope.

My recollection is that there has not been any significant change in the transportation costs. There has been in fact some modest diminution of the transportation cost for North Slope crude compared to last year, but the lower 48 prices would reflect the fact that there has simply been a market reduction in the cost of crude oil year to year of a little over $4 a barrel.

Mr. **Bedell**. Is that quite a complex computation on your windfall profits tax?

Mr. **Morse**. No.

Mr. **Bedell**. See, to the layman it would be a little surprising that by the price going from $23 to $19, which you charge yourself, that you would cut your windfall profits tax roughly in half. I presume from that if you wanted to lower it to $15 or so you wouldn't have to pay any excess profits tax to the Government. I presume you would be free to do that.

Mr. **Babikian**. No; we really would not be. Remember, the windfall profits tax is a law of this country. It is a tax law.

Mr. **Bedell**. I am well aware of that.

Mr. **Babikian**. The IRS is responsible for policing that tax to make sure the Government gets its fair tax. Now if we establish——

Mr. **Bedell**. We are responsible to see that they do that properly.

Mr. **Babikian**. Absolutely, the IRS does that. If we establish a wellhead price that we can't justify for the purpose of reducing our tax, we are not going to get away with that. The IRS is involved in this audit situation on a constant basis with us. So, if they found we were establishing a silly or deliberately low wellhead price, we would have to go back retroactively and pay that money, plus fines.

Mr. **Bedell**. Mr. Babikian, that is great, except things don't really work that way. The fact of the matter is that Congress passes laws; sometimes we pass good laws. Sometimes we make mistakes. IRS has to enforce the laws as we pass them.

It is not unusual for us to have mistakes in the way we pass the laws. If we passed a windfall profits tax which has loopholes, and it wouldn't be the first time we passed tax laws that have loopholes, you surely know that, if there is something wrong with it, then it is important for this committee to know it and to be aware of it.

That is why I am asking these questions.

Mr. **Babikian**. I understand that.

Mr. **Bedell**. $600 million is no small piece of change, even for a Federal Government such as ours. It is a little bit confusing, at a time when your volume is up, your profits are up, everything is going so well, that we would say we are going to cut your taxes by $600 million.

If you were a Member of Congress and didn't have money for the food stamp program and didn't have money for your farmers and didn't have money for all that, I think you would be asking the same questions I am asking here. I am not saying you are doing anything wrong. I am trying to dig into what the problem is.

You are well aware, I think, that many of the people, even if you weren't here yesterday, are not very happy with some of the things that they are alleging that you have done. One of those things that they have alleged is that at a time of oversupply area is limiting the amount of supply that you are giving to your jobbers. Is that charge true in some cases?

Mr. **Babikian**. Yes, we are. We are limiting our wholesale customers to 100 percent of contract volumes.

Mr. **Bedell**. Why are you doing that?

Mr. **Babikian**. Well, because if we didn't do that, because we have on balance a very low price to our wholesale class of trade, if we didn't have some kind of limit on the volume that they would lift, they would run our terminals dry in no time at all.

Mr. **Bedell**. Are you putting in similar limitations to your dealers?

Mr. **Babikian**. Our dealers do not have the potential to run our terminals dry. They really don't. Remember, when we launched our credit card program our distributors were buying 70 percent in the first quarter of this year, that is about 70 percent of their contract volume. We raised that to 100 percent, an increase of almost 40 percent, and said we will limit you to 100 percent of contract volume because we lowered the price 2.8 cents per gallon.

We had by far the lowest price in the marketplace when we kicked off this program. What would have happened in many cases, our distributors would have taken that volume out of our terminals as fast as we could have put it in and brokered the product because the profit potential was there for them to do that. We couldn't allow that to happen. So we put in 100 percent of the contract volume limit that we agreed to supply them.

Mr. **Bedell**. I hope I understand your testimony. If I understand what you are saying, you are telling me that you have limited some of your jobbers, to say they can have no more product than they had last year.

Mr. **Babikian**. No, 100 percent of their contract volume.

Mr. **Bedell**. OK, no more than their contract volume. You are saying that your dealers, those that you are supplying direct, can buy more than that. Is that correct?

Mr. **Babikian**. We are supplying our dealers with their requirements.

Mr. **Bedell**. If it is more than their contract volume, they are getting more than that?

Mr. **Babikian**. Yes, their requirements.

Mr. **Bedell**. You are saying the reason that you are discriminating against your jobbers and letting your dealers buy more is because you are afraid if you didn't do that, that your jobbers would buy too much. Isn't that what you are saying?

Mr. **Babikian**. Mr. Chairman, we are not discriminating against our jobbers. We are providing them with 100 percent of their contract volume. The reason we are providing that is because we have a differential price advantage and our jobbers in many cases, if we didn't have some kind of volume limitation, both branded and unbranded, would pull our terminals dry.

Mr. **Bedell**. But you think you ought to give preference and let your dealers buy all that they want because of the fact that your jobbers might buy too much if allowed.

Mr. **Babikian**. Our dealers do not have the potential to do that in our terminals.

Mr. **Bedell**. When you sell more than what you can supply, you are going out and buying it on the open market, are you not?

Mr. **Babikian**. We have, yes.

Mr. **Bedell**. Do you just buy any brand, or what do you do?

Mr. **Babikian**. Well, we buy gasoline that meets our specifications and then we put our special additives in it. We have done that to provide our distributors with 100 percent of contract volumes.

Mr. BEDELL. But no more?

Mr. BABIKIAN. No, no more.

Mr. BEDELL. But you are having to do that to supply your dealers, if they want to buy more than what they bought, your direct dealers that you are supplying direct?

Mr. BABIKIAN. We are supplying our direct dealers with their requirements.

Mr. BEDELL. You are doing it ever if you have to go and buy it on the open market?

Mr. BABIKIAN. Yes; we may very well be doing it for them, too.

Mr. BEDELL. That is what you are doing, is it not?

Mr. BABIKIAN. We bought gasoline from the period of May to September because we didn't have enough to meet our demand fully. Now, where that gasoline went——

Mr. BEDELL. The charge was also made yesterday that in certain cases—I think it was made against Arco, I know it was made against some of the majors—that you are supplying gasoline to some of your direct dealers for less than you are supplying it to your jobbers. Is that charge accurate or inaccurate?

Mr. BABIKIAN. I think on balance that is not true.

Mr. BEDELL. Not on balance. Is it true in some cases?

Mr. BABIKIAN. In certain cases it very well may be.

Mr. BEDELL. How do you justify that?

Mr. BABIKIAN. What we did when we announced our credit card program, we stated publicly to the consumer that Arco's price would reflect the fact that we no longer offered credit. Now, if we have a major oil company that matches the price our dealers are posting in the market, and offers credit, we will lower our price to fulfill the promise we made to the consumer.

The price moves that we have made in the marketplace have been cost justified initially, when we lowered our price 2.8 cents, and when we got rid of the credit card. Since then, they have been made to meet competitive situations in the marketplace.

So there may be in certain instances where that is true. Where we have a local price condition where we are meeting some other company, that may very well be true in that area.

Mr. BEDELL. I don't understand, if you are doing that, why are you not doing it equally with the jobber? How do you expect your jobber——

Mr. BABIKIAN. The jobber does get that same price.

[See appendix J, exhibit 2.]

Mr. BEDELL. How do you expect your jobber to be able to operate and compete in the marketplace if he is having to pay even more than the dealers that you are supplying directly?

Mr. BABIKIAN. Mr. Chairman, in that price zone the jobber gets the same price as our lessee dealers?

Mr. BEDELL. How many price zones do you have?

Mr. BABIKIAN. We have around 800.

Mr. BEDELL. Do jobbers ever supply dealers across zones?

Mr. BABIKIAN. Sure. We give this price support to the jobber. If he has a service station in that price zone, he gets the same price as our lessee dealer. Absolutely.

Mr. BEDELL. Yes, but what I am saying is if I am a jobber and I am supplying a dealer across the street on which you draw the line and say that is in a different zone, and if that dealer is buying that product for less than what the jobber is buying it from you——

Mr. **Babikian**. We would not draw a zone that way. If that distributor's station belonged in the zone with the lessee dealer that you are referring to, then he would be in that zone.

Mr. **Bedell**. Do you furnish them the information as to what the zones are?

Mr. **Babikian**. No; we do not do that. We don't make that information public for a very good reason. If we made that information public, our competitors would know what our price zone boundaries are and would react accordingly. We don't think we should do that.

Mr. **Bedell**. Yes; but they do know, don't they, by the prices that your dealers are charging?

Mr. **Babikian**. No; they don't. We may put a price support in a given zone. Not all of our dealers post that price. The dealer is free to post whatever price he wants. Some of them actually post a lower price; and some of them post more. There isn't anything deliberately done with price zones to put certain dealers in or out of them.

Mr. **Bedell**. There may not be, Mr. Babikian, but the opportunity is there to do it if you wish to. You have got price zones, which you don't let anybody know what they are, you charge different prices in the different zones, and you are free to change those zones at your discretion with nobody knowing how they are being changed.

Now, there is that opportunity. I am not saying you do that. It has been charged that you are, and certainly that opportunity is there and there's nothing to prevent you from doing it if you wanted to, is there?

Mr. **Babikian**. I think those charges are absolutely wrong. The marketing department does not determine what these zones are. Our legal department does. To the extent that they are going to have to defend any action ultimately in a court——

Mr. **Bedell**. Your lawyer is here.

Does the marketing department ever come to you and ask if they can change zone lines legally?

Mr. **Morse**. They ask if they can, but the decision as to whether they may is left to the legal department for its decision.

Mr. **Bedell**. Sure, and it is perfectly legal for them to change it, isn't it?

Mr. **Morse**. No; there are applicable antitrust laws which affect the drawing of those lines so that you cannot create the kind of anticompetitive environment you have just described.

Mr. **Bedell**. Mr. Babikian, you were quoted in the Los Angeles Times as follows: "Arco also has put some very tough requirements on the wholesale class of trade. . . It would be nice to get it 100 percent retail."

Is that accurate or inaccurate?

Mr. **Babikian**. No; I think that part of it is accurate. I did say that, but the very next part of that sentence was not included in the Los Angeles Times interview.

Mr. **Bedell**. What was that?

Mr. **Babikian**. I said it would be nice to be 100 percent retail but we never will be. What we were talking about was a sterile environment: If you start it from scratch, where would you rather be.

Obviously retail has been more profitable in the past than wholesale for the next gallon, so where a company had a choice, starting from scratch, didn't have any business, obviously, if you could afford to be 100 percent retail, he probably would go that way.

That was the context in which that comment was made. We never will be 100 percent retail. We have, indeed, changed some of the provisions of our wholesale class of trade. Again, what we are attempting to accomplish is equal profitability among the various classes of trade that we sell gasoline to, so that we are reasonably indifferent as to where we sell it. We are reasonably close to achieving that.

Mr. **Bedell**. How many wholesalers did you have in 1972?

Mr. **Babikian**. I don't remember.

Mr. **Bedell**. Two thousand is the figure we have been given.

Mr. **Babikian**. Oh, we never have had any 2,000 wholesale gasoline customers, ever. I think the highest number, as I recall, we had something like 450 branded gasoline distributors in the 1974–75 time period, something like that. Today, we have got, I don't know, something like 185–190. Most of that reduction is because we have pulled out of this tremendous geography that I mentioned in my testimony.

We have pulled out of two-thirds of the area that we used to market in. We used to market in Texas. At one time we had 130 branded distributors in Texas. We don't market in Texas anymore, so those distributors have found other suppliers.

[See appendices I and J for further discussion of this subject.]

Mr. **Bedell**. Just to clear the record, because I did get a note up to my table here, you talked about the lower price that you charged in California. I have a note here that says the lower price to distributors was the result of a lawsuit, Was it?

Mr. **Babikian**. Oh, absolutely not, Mr. Chairman. That is absolutely not true at all.

Mr. **Bedell**. I thought I would clear that up since somebody in the audience asked about it.

Mr. **Babikian**. What we do with our branded jobber, they get the same price our lessee dealer does if they have got the service stations in the same zones.

Mr. **Bedell**. Was there a lawsuit involved in saying you should lower your price?

Mr. **Babikian**. There is a current lawsuit against Arco by a group of California distributors, which we think is a frivolous suit. It is in the courts, it will be tried in the courts, but that has got absolutely nothing to do with the price that we established in California, absolutely nothing to do with it.

Mr. **Bedell**. Well, I don't want to get involved in your lawsuits. I am taking a long time, but I ought to get to the credit card thing. You said it cost you about $73 million, I think?

Mr. **Babikian**. That would have been our cost in 1982.

Mr. **Bedell**. For your credit card operation?

Mr. **Babikian**. For the entire credit card operation.

Mr. **Bedell**. What are those costs made up of? What is the major part of that?

Mr. **Babikian**. Essentially, they are the operating costs, operating and general costs, the hardware, the rent, the people, the building, the stamps, postage, and so on.

Mr. **Bedell**. Did you have much loss of credit?

Mr. **Babikian**. No, we didn't have much. It was around one-half of 1 percent, somewhere in that category, not very much. Also, the other major part of that cost is the cost of money, the cost of tying up $180 million in accounts receivable.

Mr. **Bedell**. One of the things that came up yesterday was the fact that if we pass an increase in the gas tax, that in effect the dealer will be paying a credit surcharge on the tax and you will be getting the money from the credit card, from what they pay in taxes.

What would you think about legislation that were to say that a supplier may not reap benefits from the increase in the tax, not to receive part of the increased tax revenues? What would you think of that?

Mr. **Babikian**. First of all, that wouldn't apply to Arco. We do not have credit cards, so there would be no surcharge or there would be no credit fee on Arco. To the extent that taxes go up, it results in, if there is a fee of 3 percent or 4 percent on a credit card, there is no question that the dealer ends up paying a higher fee.

Mr. **Bedell**. Mr. Hiler, I am sorry I have been so long. Do you have any questions?

Mr. **Hiler**. I have one followup question.

When it was being discussed about the amount of petroleum that you supply to your distributors, jobbers vs. branded dealers, it was said that you supply 100 percent of the contract to your distributors and you meet the branded dealers needs. What percent of the total volume that you sell goes to branded dealers and what percent goes to your jobbers' distributors?

Mr. **Babikian**. We will sell a little over 5 billion gallons. The split this year will be somewhere between 1.5 to 1.6 billion to the wholesale class of trade and about 3.5 to 3.6 billion to the retail class of trade.

Mr. **Hiler**. Thank you.

Mr. **Bedell**. Does the gentleman yield?

Mr. **Hiler**. Yes.

Mr. **Bedell**. Wouldn't that raise some question about your other statement?

Mr. **Babikian**. What?

Mr. **Bedell**. You have just said that you sell over twice as much gasoline to retailers as you do to distributors. You previously testified that you were willing to sell your retailers more than their contract amount in order to take care of their needs but that you didn't dare do that with your jobbers because they would deplete your supplies and yet the jobbers are only buying half as much as your retailers.

Mr. **Babikian**. Mr. Chairman, what I said was that in our retail class of trade we are going to sell 3.5 to 3.6 billion gallons in total this year, and in the branded and unbranded category we are going to sell 1.5 to 1.6 billion, somewhere in there. We have a lot more retail volume, and historically have had.

Mr. **Bedell.** You still don't understand my question, or I don't understand what you are saying.

Mr. **Babikian.** Maybe I don't.

Mr. **Bedell.** I am sorry to take so long, but it is important that we understand the issue. You testified that you were restricting your distributors to no more than their contract amount, but that you were letting your dealers buy more than that according to their needs. You said the reason you were doing that was that if you let your jobbers do that, then they would run you out of product, but that the dealers would not present that same problem.

Now you testify that you have twice as large a market with your dealers as you do with your jobbers. There is something I don't understand.

Mr. **Babikian.** Historically, we have had over twice as much of our volume in retail as we have had in wholesale. Historically.

Mr. **Bedell.** But are you saying that the opportunity for retailers to increase their volume is not as great as jobbers to increase their volume, even though they have twice the volume?

Mr. **Babikian.** Absolutely. Precisely right, yes.

Mr. **Bedell.** How do you explain that?

Mr. **Babikian.** Because if we have a price advantage in the market, which we do in most of our markets, our wholesale customer—let us simply say that he could buy our gasoline, a wholesale customer could buy our gasoline for 1 cent a gallon below any other price.

Mr. **Bedell.** Can he?

Mr. **Babikian.** Yes, in many of our markets he can. What he would do, what many would do, would be to broker that gasoline. They would simply go into our terminals with common carriers and fill up these common carriers, pay us our price and then resell that gasoline to someone else for a half-cent a gallon profit, or three-quarters of a cent or maybe even 1 cent a gallon profit. They would broker that gasoline and run our terminals dry. A lessee dealer or retail account cannot do that.

Mr. **Bedell.** Well, a retail account, I would think, if he could sell his gasoline for less than anybody else, would be able to substantially build his volume. I would think that if your retail dealers were buying cheaper than their competitors, then they would be able to increase their volume similarly. It would be at retail instead of wholesale, but since they have twice the volume I would think they would have twice the potential, because if they take all of the business, they are taking it away from your competitors just the same as if your distributors were.

Mr. **Babikian.** First of all, back in the early seventies they have had roughly twice the volume of wholesale, and that is about the ratio that we are at today. Now, we deliver to the dealer. All he can buy is one transport at a time. He has to sell that volume through his pumps before he can get another load.

That is not true with a wholesale account of ours. He can line up 8,000 gallon tanktrucks, 10 at a time, using common carriers, and buy gasoline from us at our terminal and turn around and broker it and sell it to someone else in tankload quantities. That would run our terminals dry in many of our markets.

Mr. **BEDELL**. Sure, but if the dealer were emptying his tanks every 20 minutes, you would have a tanker there every 20 minutes to fill his tanks, wouldn't you?

Mr. **BABIKIAN**. A dealer cannot empty his tanks every 20 minutes. He cannot do that.

Mr. **BEDELL**. I don't know how fast he can empty them, but certainly your dealers have the potential to double their sales.

Mr. **BABIKIAN**. Yes; some of them have.

Mr. **BEDELL**. Just the same as the distributor does.

What have you done with your sales to independent marketers who used to buy from you?

Mr. **BABIKIAN**. We have raised them to 100 percent of contract volume, also, recently effective December——

Mr. **BEDELL**. Only 100 percent? So your direct dealers that you are supplying can buy as much as they want, but your independent dealers are limited on supply as well?

Mr. **BABIKIAN**. That is correct. Independent jobbers, not independent dealers. These are our unbranded customers.

Mr. **BEDELL**. Well, they have retail outlets, do they not, many of them?

Mr. **BABIKIAN**. Yes, but they have other suppliers. Generally speaking, the independents have many other suppliers.

Mr. **BEDELL**. Are you making a profit selling your gasoline?

Mr. **BABIKIAN**. Yes, we are. As I said, in the third quarter the profit from our refining and marketing sector set an alltime high. We will do very well in the fourth quarter, also.

Mr. **BEDELL**. Could you make more profit if you sold more?

Mr. **BABIKIAN**. Well, I am not sure. It depends on other factors.

Mr. **BEDELL**. Would you like to sell more?

Mr. **BABIKIAN**. It depends on whether we make money on it or not.

Mr. **BEDELL**. You must have some goals. Is your goal to reduce your volume or keep it the same or increase it?

Mr. **BABIKIAN**. Well, our goal is to take this kind of situation quarter by quarter.

Mr. **BEDELL**. What is your goal for next quarter?

Mr. **BABIKIAN**. We are reasonably pleased with the performance. We would be happy to continue with the performance we have right now.

Mr. **BEDELL**. You are saying Arco has no sales goals for next quarter?

Mr. **BABIKIAN**. Yes, we have. We have established volumes. Our volumes next year are essentially at the same level they are this year; a little bit higher.

Mr. **BEDELL**. Your goals are to increase your volume?

Mr. **BABIKIAN**. Slightly, yes. Essentially they are where we are today.

Mr. **BEDELL**. Would you be pleased if you meet those goals or are you usually——

Mr. **BABIKIAN**. I am sorry?

Mr. **Bedell**. Are these goals which you are usually pleased if you meet or are you—first of all, suppose you exceed the goals. Are you usually pleased if you have exceeded your goals, or what?

Mr. **Babikian**. Well, it all depends. The real goal that we have, Mr. Chairman, is to make money. That is the fundamental objective we have. If this is a matter of our chasing volume for the sake of achieving volume without profit, then obviously we don't want that goal, we are not happy with that.

If we end up selling all kinds of volume and lose money on that volume, then we are not happy, to answer your question. If we are making money on it and we don't hit the goal, then we are unhappy because we didn't hit the goal, because if we did then we would have made more money.

Mr. **Bedell**. I am a businessman, Mr. Babikian. I think I know this sort of thing. You have got a sales department. You have set a goal for the next quarter for your sales department. If they exceed that goal, will that be good or bad?

Mr. **Babikian**. I would say on balance it would probably be good, but I am not sure.

Mr. **Bedell**. You are not sure that when you set a sales goal, for them to exceed it, you are not real sure if that would be a good thing?

Mr. **Babikian**. We set two goals, and you have to take both of these into consideration. We set the volume goal and we set the realization goal, the price that we expect to get for gasoline. If we get the volume goal and we don't get the realization or the price for it, I am not sure we are pleased with that.

Mr. **Bedell**. But for your sales department you set a sales goal, don't you?

Mr. **Babikian**. Well, the sales department has got both objectives. The sales department does not have just a volume objective.

Mr. **Bedell**. Well, you said you made a profit on what you sell.

Mr. **Babikian**. Yes.

Mr. **Bedell**. So the more they sell the more your profits should be, theoretically.

Mr. **Babikian**. Sure.

Mr. **Bedell**. If that is the case, then I take it that you set a sales goal but you don't really worry. It isn't anything very good if your sales department exceeds your sales goal, I take it?

Mr. **Babikian**. Unless it makes money. If it makes money——

Mr. **Bedell**. You have already testified that you tend to make money.

Mr. **Babikian**. But that doesn't mean that we are going to make it next year or the year after.

Mr. **Bedell**. We have taken too long, and I will have to quit, but I have to tell you as chairman it is hard for me to understand why it would be if you make money selling your gasoline, and if you have a sales goal to increase your sales for next year, why you would say to your independent marketers and to your jobbers they can only buy this much product, according to what we contracted.

I sure as heck would think it would look funny to the Small Business Committee to have you say, "We are going to sell our direct supplied stores all they want, but we are going to limit how much we will sell to those independent marketers."

We are pretty much out of time.

Mr. **Babikian**. Mr. Bedell, let me simply answer your question this way. If we took the limitation off from our wholesale customers, we would, without a slightest doubt in my mind, run our terminals dry within 1 week, and then what do we do with 2,600 lessee service stations that don't have any gasoline?

Mr. **Bedell**. I presume if that is the case most businesses would try to adjust the price such that they made as much money as they could and sold as much as they could. Maybe that is not the way to operate. You are doing real well, so I guess you have a new way of doing things.

Mr. **Babikian**. We have adopted a posture that says our price will reflect the fact that we do not have credit, and that has resulted in lower prices pretty much across the country for the consumer.

Mr. **Bedell**. Mr. Babikian, one thing is sure according to my belief; that is, if we are going to have a free market and if we are going to have an opportunity for people to compete freely and fairly, then they have to be treated equally.

If what you are going to do is say that these two classes can only buy so much from us but this class can have just as much as they want, that is not free and equal competition. Now, you may have all sorts of reasons why you can't do it from your standpoint, but we are here to see that Government operates properly and the economy operates properly.

I may be clear wrong in my beliefs, and Mr. Hiler may completely disagree with me, but I have trouble when you come before us and testify that you think it is perfectly all right to say that these two classes cannot buy more than this much of a product but those that you are furnishing directly can, when we have got testimony from you that you say is right, that you said it would be nice to get to 100 percent retail, and we have these people come before us and say they are being put out of business. When these things are happening, I don't see how you could expect me to think any differently.

A lot of the people aren't here from our committee. They may not agree. I don't know. We are here not to go after big business, for crying out loud. We want our system to operate properly. But I cannot imagine you coming before us and acting like it is perfectly fine for you to go ahead and say, "We are limiting these people as to how much they can get, but these ones that we prefer to have, these dealers and so on, these people that we would rather sell to direct, handle it ourselves, we are doing it another way.

Mr. **Babikian**. Mr. Chairman, I would argue very strongly——

Mr. **Bedell**. I am sure you would.

Mr. **Babikian**. With the fact that we are driving our branded distributors out of business. We have put a program in effect that our branded distributors, if they take advantage of it, will prosper in the marketplace.

Remember, many of the branded distributors in this country are talking about losing volume and going broke and going out of business. Our branded distributors, before we did what we did with our credit card, were only buying 70 percent of their contract volume. Last month across this country, in November, they bought about 90 percent of their contract volume. That doesn't indicate that we are putting our branded distributors out of business. It doesn't indicate it at all.

Mr. Bedell. No; but it clearly indicates if they are only buying 90 percent of their contract volume, that you wouldn't hurt yourself by letting them buy off more than that because they are not even buying their contract volume. You have said if you let them buy their contract volume, they would run you out of supply.

That doesn't make sense if at the present price they are only buying 90 percent of their contract volumes, does it?

Mr. Babikian. Some distributors are not lifting their contract volumes. Others are lifting all of their contract volumes and would want much more. These are the ones that would run us dry.

Mr. Bedell. Thank you very much. Jack, did you have anything more?

Mr. Hiler. No.

Mr. Morse. Mr. Chairman, I would just like to correct the record. You made reference a couple of times to $600 million in windfall profits tax. I don't quite know where that number came from.

Mr. Bedell. The figure they gave us—and we would like to have it corrected, if it is wrong because all I know is this is what was given to us, and it is not official—was your windfall profits tax for the first 9 months, through September 30, 1981 was $1.125 billion and for the same period in 1982 it was $650 million.

Mr. Morse. I would like to have the opportunity to correct that for the record. I think that that is not accurate. That number applies to all windfall profits tax, not just North Slope, which was the issue I think they were talking about. For example, I have looked at the North Slope——

Mr. Bedell. Oh. Well, will you break it down as to how much of it is North Slope and what that has changed and what the others haven't and give us that information?

Mr. Morse. Yes, sir, I shall.

Mr. Bedell. Thank you very much.

[See appendix J, exhibit 1.]

[Also see appendix M for further discussion of ARCO testimony.]

Mr. Bedell. Our next witness is Mr. Ellis Gunnels, vice president of Marketing of Texaco, from Houston, Tex. I think we are getting the two longest ones out here first.

Go ahead, Mr. Gunnels.

Mr. Gunnels. Mr. Chairman, may I introduce this young man at the table. His name is David Yetter, attorney for Texaco.

Mr. Chairman, if you should see Mr. Yetter become agitated, don't be alarmed. It simply means that I am saying something that he doesn't want me to say.

Mr. Bedell. I won't. I get agitated once in a while myself.

Mr. Gunnels?

STATEMENT OF ELLIS W. GUNNELS, VICE PRESIDENT OF MARKETING, TEXACO U.S.A.; ACCOMPANIED BY DAVID G. YETTER, SENIOR ATTORNEY, LEGAL DEPARTMENT

Mr. **Gunnels**. Mr. Chairman, I have summarized to the best of my ability our statement. I will hurry through it in the interest of time.

As you know, my name is Ellis W. Gunnels, vice president of marketing for Texaco U.S.A., a division of Texaco, Inc.

We appreciate this opportunity the subcommittee has afforded us to address the current market conditions as Texaco views them. Because of the time constraints, I will limit my oral remarks to the market as we see it today and respond to certain allegations I heard here yesterday.

Mr. **Bedell**. Your full testimony will be entered into the record.

Mr. **Gunnels**. Thank you, sir.

I believe the statement Texaco has filed with the subcommittee adequately outlines Texaco's current marketing practices as requested in the letter of invitation. Mr. Chairman, I would like to request that Texaco be given the opportunity to file additional written comments for the record if we determine it is desirable for a clearer understanding. Before I get into my discussion of the market, I thought it might interest you to know a little bit about Texaco's present marketing system.

Today, Texaco markets motor fuels through approximately 22,000 branded retail outlets. Of that number, 5,400 are delivered directly by Texaco and less than 300 of these are operated by Texaco. The remaining retail outlets receive their products from one of our 1,200 branded wholesalers.

Here is an important figure. Currently 63 percent of our gasoline is sold through wholesalers, 36 percent is sold through direct delivered retail accounts, and consumer accounts account for the small balance.

Having said that, let me now direct my remarks to the marketplace.

I have already said we have approximately 1,200 branded wholesalers and some 5,400 directly supplied retail accounts, all branded. Generally speaking, most of our wholesalers operate in the rural areas, and most of the direct supplied retail accounts are located in the urban or the city areas. That is generally how the business is divided.

Texaco submits to this subcommittee that the problems currently being experienced by gasoline wholesalers and retailers are not being created by the major refiners, but instead are a direct consequence of three factors: The market adjusting to decontrol, the decrease in demand for motor gasoline, and the current severe recession. The problems have not been created as a part of anyone's master plan to harm or put anyone out of business, but a result of these three factors. Today we see a gasoline market much like the market prior to the period of controls. Generally, there have been ample gasoline supplies and the consumers' demand for it grew annually.

However, our market today differs from the past in one major respect which is gasoline demand peaked in 1978 and we are experiencing a decrease in consumption. This fact, coupled with a severe downturn in the U.S. economy, has significantly intensified competition. All marketers are fighting for a piece of a shrinking gasoline market. As a result, a narrowing of margins at all levels has taken place: Retailers, wholesalers, and refiners alike have felt this profit squeeze. Consumers, however, as they always do in an uncontrolled market, have benefited through lower fuel prices at the pump island. To sum up, what we have here is a free market in action which ultimately benefits the consumer. In today's market, no individual or group should be protected from the competitive forces at the expense of others and ultimately at the expense of the consumer.

Now I would like to turn to certain allegations and issues which we heard here yesterday morning. Without necessarily inferring a priority, I would like to cover briefly six points. First I should say I would like to clarify the communications our company has with its wholesalers and retailers.

We have 1,200 fine branded wholesalers. In order to better communicate with them, we asked them to hold free elections, unsupervised by us, and elect 14 spokesmen from their peers. They serve a 2-year term. We call this the Texaco Wholesaler Council. They have a chairman and 13 members. I meet with that council a minimum of twice a year, and 1 year we met four times recently as the competitive pressures grew.

The purpose of that council is to provide a forum for discussing these very things. Our most recent meeting was August of this year. Virtually all of this material we have heard here yesterday and today was covered with our wholesalers. We worked together to try to find solutions for these problems.

We had two fine wholesalers here yesterday. Neither of these two gentlemen is an elected representative of the Texaco Wholesaler Council. They are wholesalers in good standing. They are who they said they are: They are friends of mine, but I wanted to set the record straight as far as how we do communicate with our Texaco wholesalers. Incidentally, we have retailer councils in each one of our 14 divisions, composed of 6 retailers for the same purpose.

Now, the thing that disturbed me most yesterday—and I sat through the entire testimony—was the allegation that we are subsidizing pricing in the city of Atlanta. I would like to take a little time here and explain what is going on in Atlanta. I cannot do that without explaining our pricing policy. We generally don't reveal our pricing policy and marketing policies in the full face of our competitors, but it is necessary here, Mr. Chairman, for you to understand how we do price gasoline in the city of Atlanta. I might say that Atlanta is no different from Houston or San Antonio or Philadelphia or anyplace we market.

The general pricing policy that we have works like this. We have established what we call "origin pricing." That is our name for terminal pricing. We have let's say 100 terminals, 1 in each major city. Atlanta is one of them.

At our Doraville terminal that is in Atlanta—it is a pipeline terminal—we have a loading rack and storage tanks and all the things we need to supply gasoline and load the trucks. From that rack at Doraville in Atlanta we have retailers who are supplied and we have wholesalers who are supplied within a radius of whatever that supply terminal is, and it is probably a 100-mile radius. Now, we have two prices, and two prices only. We have the retailer tankwagon or dealer tankwagon price, and we have the distributor price. We have two prices only. Every retailer that draws his product from that terminal pays the same price. Every wholesaler that is supplied from that terminal is charged the same price.

That is the system we use not only in Atlanta, but in all of our terminals. It is a pretty simple system, and it works fine for us. You say, well, how is it I heard all these different prices. Let me explain as well as I can why you see different prices on the street.

We have in effect in Atlanta, and in fact in all the country, a gasoline incentive program. It is a month-to-month sales tool that we use, or have been using. We could withdraw that for January, but it is in effect this month. This is for retailers only; it does not apply to wholesalers. I will explain that in a minute. Here is how it works. It is a very simple mechanism. It is actually a quantity discount, a common sales tool in marketing of all products: The more you buy, the cheaper it is.

Our quantity discount works like this. Every retailer who pulls out of the Atlanta rack starts with the retailer tankwagon. I don't know what that is, but it is probably 98 cents for leaded gasoline; something like that. They all are charged the same price on the first day of the month. We establish for him a base period. The most common base period is the same month last year. That is his base period.

Now our quantity discount works like this. In this particular case, he pays the full price for the first 50 percent of his base period sales. Let's say that last year he sold 50,000 gallons in December 1981. When he reaches 25,000 this December, we give him an incentive, or a quantity discount, and in Atlanta it is 4 cents.

So, from that point on he gets the tankwagon less 4 cents, out to a point where he has now sold 100 percent of his base period. At that point, if he should do that—and this would encourage him to sell as much as he did last year—he earns a bonus, an additional bonus of 1½ cents, and we give him that on all gallons back to gallon one. That is the gasoline incentive.

You ask me, why don't you give that to your wholesale class of trade? It is a good question. The margin down there, I don't know what it is exactly today, but I would estimate this morning the difference in the retail tankwagon and the distributor buying price is 5½ cents, to maybe 6. Now, you can see that that is quite a difference. However, if a retailer should do a good job in selling and give good service and have competitive street prices and stay open later and give better service and do all of the things to sell more gasoline, then as he increases his sales, his price then becomes narrower.

We watch it closely to make sure that he doesn't have the opportunity to get his entire price below the wholesale. That is not our intent at all. Our intent is to have the retailer sell as much gasoline as he did last year, and maybe more. Hopefully more. We are trying to sell our gasoline.

Now, what about the wholesaler?

Mr. **Bedell**. I don't want to cut you off, but it has been 15 minutes so we would like for you to go a little faster.

Mr. **Gunnels**. All right. Let me hurry through this.

We don't have it for the wholesaler because in the beginning we included both classes of trade. We always have. September 1980 we introduced this form of incentive. It really didn't work out satisfactorily for the wholesalers. They struggled with it, they liked it, but it is difficult to manage for them.

The wholesaler council came to me in February of this year and asked that it be removed from their class of trade and that we make a commensurate drop in their price, which on that day was 3 cents. We did it on March 1 this year. This is at their request. In our subsequent meetings, we always say well, you want to be back in the incentive, and half of them do and half of them don't. So, that is the reason.

I need to clarify one more thing on low street prices. That is an item called composite pricing. Composite pricing simply means that an aggressive retailer has three products. He doesn't have to have the same margin on each of the three products. What he could do is choose to have a very low margin on one grade, leaded, a better margin on unleaded, and a much better margin on super, 91 octane. The combination of that composite would give him his normal margin. It enables him to post this seemingly very low price on the street.

Let me hurry along here. I think you need that to see how these things could happen.

I heard quite a bit of discussion on contract maximums. First, let me say that we too have wholesaler contracts, and we have minimums and maximums in those contracts, not trying to limit anybody for this reason. Our distributors so far this year have purchased only 80 percent of their contractual amount. We would like for them to buy more.

The reason we have to have a contract max is to have some order in the managing of the terminal inventories. It is possible that without a maximum, a big distributor could pull a terminal dry. We have had it happen. That is why we had to do this. That leaves all the other people out of gas until we can get some more. Keep in mind our distributors are only buying about 80 percent. We would like for them to buy 100 percent.

Furthermore—another interesting point—most of our branded distributors, including the two that were here yesterday, have more than one supply agreement. They have the same supply agreement with Mobil, Arco, Gulf, maybe as many as five. They use that mechanism to buy where the price is the lowest. That is understandable. But they really are not being deprived of gasoline by any one of us; at least by Texaco.

What about credit? I heard an allegation that there has been a change in credit terms on gasoline. I want to say that at least Texaco, we have not changed the terms on motor gasoline in years and years. The terms are 1 percent in 10 days, that is a 1-percent discount for cash in 10 days, net 30. This is to wholesalers; that has not been changed.

On the credit card policy, I just have about two more points here, Mr. Chairman. I thank you for being so patient. I have been wanting to say this for 2 days now.

On the credit card policy, very simply stated, last year, in the summer, we were faced with having to make a decision to do one of two things, a clean business decision: Give up our credit card or offset a portion of the cost.

We agonized over it for months. We know that we need the credit card. We think our customers, our dealers, our wholesalers need it. This is what brought us to the point. Our costs on the credit card this year will be $128 million, and we will offset that only by $72 million. That is our customers' share. We will absorb the rest of it. The system is working fine. If the person doesn't use the credit card, there is no charge.

Let me move on hurriedly.

Why don't we solicit these folks, these distributors who have been canceled or muscled out, why are we refiners not soliciting? I am here to say that we are. We have acquired at least 12 new distributor accounts, and I am very happy with them.

Here is the reason that I would go slow. Generally in our marketing area we already have a distributor just about everywhere, in every county. We would be very hesitant to take another distributor and put him on top of an existing one. So, the only opportunity that exists is when there is a marketing reason, where we have an uncovered area for some reason, then we will sign up the best distributor we can get. So much for that. I am just about through.

Does Texaco use price zones? Answer: No. I have explained how we work our prices. We are very happy with it. We are determined to hold our share of the market for our wholesalers and our retailers, and we are; but I can tell you, Mr. Chairman, it is a tough market out there.

In closing, I would like to say this. It sounded here yesterday and today like we consider our wholesalers our adversaries. Nothing could be further from the truth. They are not adversaries of ours, they are not competitors of ours, they are our customers. Our retailers and wholesalers sell all of our gasoline. If we didn't have them, what would we do with it? We have got to have them.

We will have wholesalers as far into the future as I can see. We consider them partners in business, not adversaries. They are friends of mine. We meet on a regular basis. We talk on the phone once a week. Mr. Hickey and Mr. Meintzer and all the other fine wholesalers we have. We have some in the audience right here, and I think they would confirm that.

I thank you for letting me run over my time. I feel better now. I have got all that said.

Mr. BEDELL. Thank you.

[Mr. Gunnels' prepared statement follows:]

PREPARED STATEMENT OF ELLIS W. GUNNELS, VICE PRESIDENT OF MARKETING, TEXACO U.S.A.

My name is Ellis W. Gunnels, Vice President of Marketing for Texaco U.S.A. a division of Texaco Inc. Texaco appreciates the opportunity this subcommittee has afforded it to address the current market conditions as Texaco views them.

Before I get into my discussion of the market, I thought it might interest you to know a little about Texaco's present marketing system.

Today, Texaco motor fuels are marketed through approximately 22,000 branded retail outlets. Of that number, about 5,400 are delivered directly by Texaco and less than 300 of these are operated by Texaco. The remaining retail outlets receive their products from one of Texaco's approximately 1,200 branded wholesalers. Currently, about 63 percent is sold through direct delivered retail accounts, 36 percent is sold through direct delivered retail accounts, and consumer accounts receive the balance. Having said this, let me now direct my remarks to the marketplace.

Perhaps it will aid us in understanding where the market is today if we look back a few years and see where it was.

There is no doubt that the fuel market we see today bears little resemblance to the market of the 1970's. The petroleum industry labored under federal government allocation and price controls that locked it into practices which ignored economic realities, curtailed competition and created gross distortions in the marketplace. The nation was suffering with a high level of inflation. Interest rates reached unprecedented levels. Consumers, feeling the pinch caused by these negative economic forces, became even more price conscious and their preference began shifting from the traditional full-service station to self-serve gasoline stations. Repair shops specializing in tune-ups, oil changes, shock absorbers, and brakes sprang up to compete with the service station retailer. Gasoline began to be marketed by convenience stores, discount houses and mass merchandisers. In addition, many mass merchandisers began to sell a full line of automotive tires, batteries, accessories and services. While these factors, and others, called for new marketing strategies, DOE regulations insulated historic business practices and impeded change.

THE MARKET TODAY

The lifting of controls in January 1981, by President Reagan signing Executive Order No. 12287, ushered in a new era in petroleum marketing. After almost a decade of being tied by government controls that had effectively impeded years of market evolution, the market was allowed to freely operate. It was inevitable that adjustments would be made by those in the marketplace who wished to remain competitive. However, what might have evolved slowly had there been no controls, occurred quite rapidly as refiners, wholesalers and retailers reacted to decontrol.

The gasoline market, prior to the period of controls, had been highly competitive yet profitable for those who could adapt. Generally, there had been an ample supply of gasoline, the demand for which escalated annually. The gasoline market today, although similar to the past as having ample supplies, differs from it in one major respect, that is, demand peaked in 1978 and we are experiencing a decrease in consumption. This set of circumstances, coupled with a downturn in the United States economy, has significantly intensified competition. All marketers are fighting for a piece of a shrinking gasoline market. As a result, a narrowing of margins at all levels has taken place. Retailers, wholesalers and refiners alike have felt this profit squeeze. Consumers, however, have benefited through lower fuel prices at the pump island.

Texaco has had to analyze every facet of its operations and, biting-the-bullet, implement various painful cost reduction programs in order to remain competitive in today's market. In addition, Texaco has taken steps to ensure that productivity is increased at all levels of its operations. Wholesalers and retailers must continue taking similar steps to cut their costs and improve productivity if they are to remain successful during these difficult times.

MARKET WITHDRAWAL

The changing market conditions, among other things, required Texaco to reassess its market position. Texaco determined that it was spread too thin, and that the strategies which had served so successfully in the past would not allow it to efficiently serve the need of its customers in all 50 states. After much consideration and pursuant to DOE approval, Texaco publicly announced that it would withdraw from its marketing operations in certain areas of the United States.

The areas ultimately designated for withdrawal were generally areas where Texaco had a small share of the gasoline market, high operating costs and little potential to improve efficiency in operation. Between April 1977 and today, Texaco has phased out of the motor fuels market in the upper Rocky Mountain, the Midwest and the Great Lakes states. Other refiners are now supplying Texaco's former customers and those markets remain very competitive. The result of this activity, while painful and expensive for Texaco, is that Texaco, its wholesalers and retailers are more efficient and viable—and more competitive—in the market where they remain.

CREDIT CARD OPERATIONS

Another area Texaco analyzed was its credit card system. In the past, the cost of the credit card system was reasonable and the Texaco credit card was used to the benefit of Texaco, the wholesaler and the retailer. However, the inflationary trend during the past ten years, together with the continuing high interest rates, caused the costs associated with maintaining the credit card system to escalate to an unacceptable level. The amount owed Texaco by its credit card customers, at any given time, averages in the hundreds of millions of dollars. Included in this amount are tens of millions of dollars representing federal, state and local excise taxes that Texaco has already paid.

Our studies indicated that the best action Texaco could take and which would be fairest to all concerned was to ask those who share in the benefits of the credit card system to also share in the costs of maintaining the system. Accordingly, Texaco announced in August, 1981, that effective November 1, 1981, Texaco would charge a 3 percent processing fee of all credit card transactions.

Attached to your copies of my statement today you will find a copy of the statement Texaco filed with the Subcommittee on Consumer Affairs and Coinage of the House Committee on Banking, Finance an Urban Affairs during hearings on H.R. 5362, an Amendment of the Truth in Lending Act to Prohibit Gasoline Credit Card Fees. I believe this statement adequately reflects Texaco's basis for implementing a processing fee for its credit card use. It should be emphasized that neither retailer nor wholesaler are obligated to accept Texaco credit cards.

PRICING POLICIES

Texaco also recognized that the pricing policies it had used in the past might not be compatible in the market of the 80's. Accordingly, on June 1, 1981, Texaco implemented its terminal or origin pricing plan for wholesalers at a few select locations. By September 1, 1982, all of its wholesalers were purchasing motor fuels from Texaco under this program. Basically, a wholesaler price for each motor fuel is established at each terminal, based upon prevailing market conditions. All Texaco wholesalers who pick-up or receive product from the same terminal are billed the same price unless Texaco arranges for transportation to their storage facilities. In those cases, the freight costs to Texaco are added to the price. Texaco believes this method is the fairest way to price its products and keep our prices competitive.

Retailers who purchase products directly from Texaco are invoiced at the retailer tank wagon (RTW) price established for the area in which they are located. The RTW is based upon several factors, such as the prevailing retailer prices of Texaco's competitions in each market and the freight costs to deliver to the area from the supplying terminal. Price changes are made in response to changing market conditions.

Texaco's pricing policies are designed to assist Texaco's wholesalers and retailers to be competitive in the market. Since market conditions vary and may not be the same for both classes of trade at any given time, price adjustments might not be made for the same amounts or at the same time for both classes of trade.

It is important to remember that, historically, some refiners, large and small, have preferred to market their products almost exclusively through wholesalers. Others have preferred to by-pass the wholesaler and go directly to the retail market through all salary operated outlets, all leased dealer outlets or a combination of the two. Still other refiners have maintained a balance between the two. Texaco believes a balanced selling effort between wholesaler and retailer classes of trade is best for its marketing operations. Texaco is committed to keeping its prices to wholesalers and retailers competitive in the marketplace.

INCENTIVES REBATES

In response to various rebate programs being offered by competitors, Texaco implemented its own rebate program for its wholesalers and retailers on March 1, 1981. While Texaco believes the program was very helpful in assisting its customers in staying competitive, it apparently created certain problems for its wholesalers. Several months after the program was implemented, in response to complaints received from wholesalers, Texaco discontinued the wholesaler rebate program effective April 1, 1982 and adjusted their buying price. However, the retailer rebate program is still in effect on a month-to-month basis.

Texaco has heard allegations that its rebate program enables Texaco direct delivered retailers to purchase gasoline at lower prices than those available to Texaco branded wholesalers in the same market. This is not true. It is possible, however, that one or more gasoline invoices a retailer receives late in the month, after he/she has qualified for the maximum rebate, might reflect a price lower than a wholesaler's terminal price. But it must be remembered that the retailer must purchase a specified volume at *full* RTW to qualify for the first rebate. Therefore, when all purchases are averaged together, the retailer's overall cost of gasoline is still greater than a wholesaler's in the same market.

GASOLINE VOLUMES TO WHOLESALERS AND DIRECT RETAILERS

Now let me address the allegation that Texaco is treating its wholesalers unfairly by limiting the volumes of fuel it will sell them. In 1976, Texaco offered its wholesalers a five year supply agreement, replacing the one year contract favored by industry. This action was heralded by most jobber groups as being a positive step in securing the future for wholesalers and warmly received by Texaco's customers. Those agreements had a provision stipulating the maximum amount of fuel Texaco would sell the wholesaler during the contract year(s) (May through April), as well as minimum volumes Texaco's wholesaler agreed to purchase. With the passage of the Petroleum Marketing Practices Act in 1978, Texaco began to offer three year contracts as the five year agreements began to expire April 30, 1981. These three year agreements also contain a provision similar to that in the predecessor contracts providing for maximum volumes of fuel Texaco will make available, as well as a minimum volume its wholesalers to purchase during the contract year. Generally, the volumes contained in the agreements were determined by the historic purchases of the wholesaler and their reasonable growth expectations during the period covered by the agreement. Accordingly, Texaco believes its wholesalers have been fairly treated in the negotiations of their marketing agreements and the volume stipulations contained therein.

These negotiated volumes are of mutual benefit to both the wholesaler and Texaco. The wholesaler achieves a security of supply and Texaco can better plan for its product requirements. Further, wholesalers are largely committed to drawing no more than 1/12 of the annual maximums in any given month. This requirement enables Texaco to more efficiently supply all its customers and helps eliminate spot shortages.

Texaco has heard the complaint by some wholesalers that Texaco limits them to their contract maximums while placing no such limits on their direct delivered retailers. This complaint seems out of step with the fact that Texaco wholesalers, during the 1981 contract year, underlifted as a group, 777.8 million gallons of gasoline (or they drew only 82.8 percent of the maximum available to them). Through October 31 of the current contract year, they have purchased only 87.0 percent of their contract maximums. Surely this should indicate that they have not been harmed by the limits placed upon them in their contracts. Further, where the contract maximums have placed an undue burden on a wholesaler, Texaco has been agreeable to work with the wholesaler to try to improve the situation.

It should also be noted that many wholesalers, including Texaco's, have more than one supplier. Because of this, the fact that Texaco wholesalers did not draw all of their contract volumes from Texaco does not necessarily mean that they did not get all the gasoline they needed or that the markets they served were not adequately supplied.

Texaco currently has no volume limits in its existing contracts with its direct delivered independent retailers. These customers generally operate under different circumstances and their total requirements are limited by the demographics immediately surrounding their station location. Retailers generally do not have the storage capacity or customer flexibility to demand large volumes at a given time, as many wholesalers can do.

ALLEGED SUBSIDIZATION

Texaco is again hearing allegations that integrated oil companies are subsidizing losses at their salary or contractor operated retail outlets from profits made in their upstream operations. Similar allegations have recurred periodically for a number of years and usually reflect temporary dissatisfaction with prices at some level of the industry. By "subsidization" critics presumably mean predatory pricing, which involves a company's deliberately incurring losses from low prices so as to obtain future gains when competitors are driven out of business.

In the past such allegations have been rejected—as the current allegations should be rejected—because they are completely implausible, resting on an assumption that vertically integrated companies are irrational. Thus, the Council on Wage and Price Stability concluded that the argument that integrated oil companies subsidize refining operations with profits derived from crude oil "is entirely conjectural, since hardly any persuasive evidence has been presented by proponents, and almost none can be found in the industrial organization literature." A similar conclusion was reached by the DOE in its extensive two volume analysis of the gasoline market as required by Title III of the Petroleum Marketing Practices Act of 1978. The DOE, in its final report published in January, 1981, found that major integrated refiners have not subsidized low pump prices at company operated stations.

The fallacy underlying the claims of "subsidization" has been repeatedly pointed out. A company engaged in crude oil production, refining and marketing has every incentive to seek the best profits can from each aspect of its business. Predatory pricing makes no sense for a company which is only a relatively small factor in a marketplace. It would be irrational for one company or a few companies to engage in predatory pricing in an industry where the largest refiner has less than 9 percent of United States capacity and where there are thousands of independent wholesale distributors engaged in the resale of petroleum products. Because of competition in the marketplace, the hypothetical future for the sake of which losses were taken would never come.

If "subsidization" does not mean predatory pricing, but only that a company is incurring losses in one segment, such as refining and marketing, or is making a smaller profit in some segments than in others, the term is meaningless. Clearly different businesses have different profit and loss records at different times.

It is particularly inappropriate to label losses in refining and marketing as subsidization. Since decontrol, many segments of the integrated oil company are reflecting extraordinary costs with respect to a number of individual aspects of its business. The reason for this is that these companies were impeded for over a decade by DOE regulations from making a number of changes which would have been mandated by efficiency considerations. These restrictions prevented complete economic adjustment to a variety of major changes. Now, the process of making these necessary adjustments has involved, for all segments of the industry, the expense of changing outmoded methods of doing business to conform to current conditions. But these adjustments, although painful, have led to lower costs and greater efficiency which has benefited the consumer.

MERGERS

The last area I would like to touch upon, and one that Representative Bedell asked be addressed, is the issue of oil company mergers. In this regard, Texaco believes its position is adequately expressed by the Federal Trade Commission in the extensive study they recently completed at the mandate of Congress. That study concluded:

"Based on currently available information, the Commission recommends against any legislative ban on oil company mergers. Such interference in normal market forces is unwarrented, both because there have been no significant adverse implications on the state of competition in the industry from mergers, and because mergers with significant competitive impact can be satisfactorily examined under Section 7 of the Clayton Act and the 1976 Hart-Scott-Rodino amendments to that statute."

CONCLUSION AND SUMMARY

There is no doubt that most everyone involved in the manufacturing and marketing of petroleum products is experiencing some degree of financial difficulty, but their situation is not unique. The recession has touched all types of business, including Texaco. The nation has seen small and large businesses fail recently in numbers unprecedented since the Great Depression. Texaco submits to this subcommittee that the problems currently being experienced by wholesalers and retailers are directly related to the market adjusting to decontrol, the current economic downturn and the decrease in demand for petroleum products. Their problems have not been created as part of some "master plan" to harm or put anyone out of business, and further legislation is not a solution because, as we learned in the 1970's more problems are created than cured by legislative remedies to market problems.

It might be wise to review recent studies [1] of the effects that "retail divorcement" legislation has had on the consumers in Maryland since its passage in 1978. The majority of studies indicate that the price of gasoline is several cents per gallon higher than it would be without the law, and competition, in general, at the retail level has been reduced.

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[1] *The Impact of Retail Divorcement Legislation on the Gasoline Market in Alabama*, Ronald C. Bird, Ph.D., University of Alabama.

A Maryland Study, Professors John R. Umbreck and Jack Barron, Purdue University, January, 1982.

Just as there are no quick fixes for the nation's economic woes, there are, equally, no quick fixes for the gasoline market. The proper role of the federal government is to insure that competition exists and thrives in the marketplace. It should not protect or insulate one group from market forces at the ultimate expense of another group and ultimately at the expense of the consumer. The market adjustments currently underway are in the consumers' best interest.

TESTIMONY OF ELLIS W. GUNNELS, VICE PRESIDENT OF MARKETING, TEXACO U.S.A.

Mr. Chairman, members of the Committee, my name is Ellis W. Gunnels, Vice President of Marketing for Texaco U.S.A. a division of Texaco Inc. As Vice President of Marketing I have the responsibility for the marketing of petroleum throughout the United States.

First of all, I wish to thank you for your kind invitation to appear here today and permitting me the opportunity to express my strong opposition to H.R. 5362.

Texaco, effective November 1, 1981, imposed a 3 percent charge or merchants fee on those Texaco retailers and wholesalers (not on the cardholder) who sell goods and services and use the Texaco credit card. We think this fee is fair and reasonable to the consumer, the retailer, the wholesaler and Texaco. H.R. 5362 would prohibit us from imposing this fee and we thus oppose this legislation for the following reasons:

1. H.R. 5362 would force cash customers to pay for the use of the Texaco credit card by credit card customers.

2. H.R. 5362 prevents the gasoline consumer from having the freedom of choice of buying on credit or at a lower cash price.

3. H.R. 5362 takes away all incentive for the retailer to offer a cash discount.

3. H.R. 5362 prevents oil companies from having the freedom to choose whether or not to continue with credit cards and at the same time compete for cash customers at lower price levels.

5. H.R. 5362 forecloses any opportunity for lower consumer prices by indirectly reimposing price controls on branded gasoline.

6. H.R. 5362 severely curtails the small independent oil companies from entering the credit card business.

7. H.R. 5362 prevents oil companies from recouping the rising costs associated with credit cards from those who benefit from credit.

8. H.R. 5362 would actually be detrimental to those it purports to protect.

9. H.R. 5362 discriminates against a portion of the credit card community and could serve to undermine the "merchants fee" concept.

10. H.R. 5362 contains language concerning "indirect" pass-through of credit card costs which, if taken literally, raise serious constitutional and equitable questions.

Let us consider each of these points in greater detail.

The first point I wish for you to consider if that, if enacted, H.R. 5362 would force cash customers to continue to pay for credit extended to credit card customers.

Oil companies have historically (except for the period of DOE regulations) included credit card costs within the wholesale price of their gasoline. In other words, pre-1973, Texaco simply included in its wholesale price for its gasoline an amount to cover the expenses Texaco incurred for having its own credit card program. These expenses included the cost of carrying the accounts receivable, administrative expenses associated with actually processing the credit card invoices and supporting the credit card system, and of course bad debts.

When a company simply increases its wholesale price of gasoline to offset these rising credit card costs (as all oil companies would be compelled to do if H.R. 5362 were enacted) the cash customer is forced, in effect, to subsidize purchases made by credit card customers. Perhaps Professors Murphy and Ott stated it best in their treatise Retail Credit, Credit Cards and Price Discrimination, 43 Southern Economical Journal at p. 1303 (1977) where they said ultimately, of course, all costs will be borne by consumers in the price of the seller's products. However, while all customers (cash and credit customers alike) share in the burden of higher prices, only those customers using credit cards gain the benefit of the use of credit cards. Therefore,

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Testimony of Dr. Phillip E. Sorensen, Florida State University, before the Senate Judiciary Committee, October 21, 1981.

Testimony of W. J. Bittles, Jr., Shell Oil Company, before the Senate Judiciary Committee, October 21, 1981.

Testimony of Jesse D. Winzenreid, Crown Central Petroleum, before the Senate Judiciary Committee, October 21, 1981.

the cash customers subsidize in large part the purchases on credit by the credit card customer, yet the cash customers gain no benefits from the credit card system. Dr. S. R. Andersen in *The Disadvantaged Consumer* (1975) and Dr. D. Capolivitz in *The Poor Pay More* both argue quite convincingly that the poor—say in the ghettos of Chicago—who either cannot qualify for credit or who wish not to use credit are forced to pay higher prices which include these hidden credit card costs. H.R. 5362 obviously exacerbates this problem.

Maybe this point of the cash customer subsidizing purchases made on credit by the credit card customer was best made by the Honorable Raymond J. Broderick. Judge Broderick is a Federal Judge in Philadelphia who on February 6, 1982 rendered a decision in a case entitled William Melso and Timothy Musser v. Texaco Inc., copies of which are submitted for the record. The Melso & Musser v. Texaco case was a class action lawsuit filed on behalf of all Texaco dealers who are being supplied with gasoline by Texaco and who are being charged a 3-percent fee by Texaco for Texaco processing all credit card invoices submitted to Texaco since November 1, 1981. In that lawsuit Judge Broderick held that Texaco's credit card processing fee was "legal and proper in all respects." Moreover when speaking about the cash customers subsidizing purchases made by the credit card customers, Judge Broderick said and I quote:

"Many credit card purchasers in the United States have long received a subsidy at the expense of those consumers who have been paying cash for the product. In effect, the cash customers, by paying a price made higher because of the cost of operating a credit program, have been subsidizing the extension of credit to all credit card purchasers. In the past, dealers in gasoline could have eliminated this subsidization by giving a discount to the consumer who purchased for cash. However, prior to November 1, 1981, the Texaco dealers had no incentive to do this since Texaco imposed only a nominal charge ($36 per year) for processing and collecting on credit cards. The cost of the credit program prior to November 1, 1981 was not specifically passed on to the Texaco dealers but was included in the tankwagon price or otherwise borne by Texaco. Since November 1, 1981, the Texaco dealer is well aware that he must bear most of the cost of processing credit card sales. The current Texaco credit card program eliminates the Texaco dealers' incentive to continue imposing on all gas buyers the costs of processing and collecting for credit card sales. Texaco dealers since November 1, 1981, have the option to continue the practice of spreading the cost of credit cards among Texaco consumers of gasoline. Texaco's 3 percent processing fee does not require their dealers to do this. Indeed, to the extent that the Texaco dealers contend that the 3 percent processing fee compels them to offer a discount for cash purchases, this contention acknowledges the equity of eliminating what some consider a discriminatory practice of assessing cash buyers of gasoline the cost of processing credit cards."

As has been clearly demonstrated, H.R. 5362 would force the cash customer to continue to subsidize the credit card customers' purchases on credit. H.R. 5362 would not cure the ills it was designed to cure but instead would cause more dislocations of wealth.

The second, third, and fourth points will be discussed together because each of these points involves freedom of choice.

H.R. 5362 destroys the freedom of choice: first of the consumers, second of the retailer and third of the oil companies.

H.R. 5362 abrogates the freedom of choice of the consumer by doing away with the consumer's option to choose a lower cash price vis-a-vis a credit card price. This is so because H.R. 5362 forces the oil companies to have one wholesale price which includes the credit card processing expenses. Because there is only the one price there is no cost savings passed on under this amendment to the retailer.

Maybe an example would best illustrate this point. Let us assume that the credit costs today are 6 cents per credit gallon of gasoline. Let us further assume that Oil Company A and Oil Company B sell 50 percent of their gasoline on credit. Oil Company A includes all of its credit card costs in its wholesale price of gasoline, which is $1.25 per gallon. Oil Company B breaks out the cost of credit from its wholesale price which is $1.22 per gallon, and recoups the credit expenses by a processing charge assessed only on credit gallons sold. A retailer of Oil Company B has a 3 cents per gallon price advantage over a retailer of Oil Company A on each gallon sold for cash. This incentive can be passed on to the motoring public through the use of cash discounts made available by Congress in the cash Discount Act. If the retailer of Oil Company B sells all of his gasoline for cash, neither he nor his customers pay anything to support Oil Company B's credit card system. A retailer of Oil Company A has no incentive to offer a cash discount because he and his cash customers must support his supplier's credit card system through the higher wholesale price. H.R. 5362 would force Oil Company B to adopt the pricing policy of Oil Company A to the detriment of its retailers and cash customers.

If H.R. 5362 is defeated, an oil company has the freedom to choose whether it wishes to break out its credit costs and implement a processing fee, and the retailer then has the freedom to choose whether he wishes to retain the oil company's credit card system or go cash only, or some combination of the two. Moreover, the retailer has the freedom to chose whether he will accept the oil company credit cards just on mechanical services or for tires or whatever product mix he believes is in his own economic best interest and best serves his local needs. For example, he may wish to sell gasoline at the low cash only price but recoup all of his processing charges from mechanical services.

The consumer benefits by having H.R. 5362 not reported out of this committee because some retailers are certain to give cash discounts and thereby encourage a whole new round of downward pricing moves. What Judge Broderick in the *Melso & Musser v. Texaco* case ruled on this point may be of some interest to the panel.

"The evidence presented at trial showed that many Texaco dealers established cash only pumps or islands and that these dealers are experiencing increased overall gasoline sales and increased profits despite the 3 percent processing fee for credit cards instituted on November 1, 1981. Based on all of the evidence, the Court concludes that Texaco's imposition of a 3 percent charge for processing credit card sales will not result in reduced profits for Texaco dealers provided that Texaco continues to keep its tankwagon price at a level that will compensate the Texaco dealers for the imposition of the 3 percent processing fee on credit cards. As heretofore observed, strong competitive pressures will likely compel Texaco to continue its adjustment in tankwagon price, most probably through the continued uses of rebates. The recent alteration in Texaco's credit card program in fact gives the Texaco dealers an opportunity to adopt innovations in gasoline marketing and pricing because the cost of credit sales is no longer included in the tankwagon cost of gasoline to the Texaco dealers. Since November 1, the dealer has been able to specifically identify the cost to him of a credit card sale of gasoline. The dealer may now respond to that knowledge in the manner that he feels will best benefit his service station's operations. That response may take the form of a discount for cash sales, a higher per gallon price for all sales, refusal to accept credit cards, or acceptance of credit cards only for certain purchases."

The fifth point I wish to make is that H.R. 5362 would eliminate lower prices. This is so because it completely discourages cash discounts, as noted previously. Therefore, H.R. 5362 would, in effect, reimpose price controls upon a segment of the petroleum industry. Surely the lesson this nation learned from the price and allocation controls of the 1970's has not already been forgotten.

This brings me to another point: credit card processing fees by oil companies are not an attempt by them to circumvent the Cash Discount Act. Imposition of a processing fee comports exactly with that act. We believe it is H.R. 5362 that is inconsistent with the stated purposes of the Cash Discount Act. Did not this very subcommittee vote out of committee the Cash Discount Act so as to encourage the giving of cash discounts? Yet H.R. 5362 undoes that very excellent work you performed because it takes away the incentives for any retailer to give a cash discount, as is so clearly evident from examples A and B covered previously. Judge Broderick also observed in the Court's finding of fact that, "[T]exaco's 3 percent processing fee is consistent with public policy as embodied in legislation such as the Cash Discount Act."

The sixth point for your consideration is that H.R. 5362 severely curtails the small independent oil companies from entering the credit card business.

As we all know, the small independent oil companies have built their business on price, therefore, it seems logical to conclude that if they wish to make their own credit card available to their customers who desire such, the credit card must be self supportive, i.e., . . . the oil company credit card must pay for itself not in the form of a higher price at the pump because such would be self destructive. Instead, the processing fee would be the only sound business avenue open to the independents. Yet H.R. 5362 prevents all oil companies from charging such a fee.

The seventh point I make is that H.R. 5362 prevents oil companies from recouping the rising costs of their credit card programs by making it possible for the one who uses the credit card to pay for those rising costs. To develop this point we must briefly examine history.

In the past, the cost of the credit card system was reasonable and the Texaco credit card was used to the benefit of both Texaco and the retailer to increase sales. However, the inflationary trend and spiraling interest rates during the past ten years, and more particularly the past two years, have caused all costs pertaining to of the credit card system, i.e., . . . postage, interest and labor, to escalate to an unacceptable level. The dramatic cost increase in recent years associated with maintaining the credit card system is due primarily to inflation and the high cost of money required to carry the accounts receivable. The amount owed Texaco by its credit card customers, at any given time, averages in the hundreds of millions of dollars. Included in this amount are tens of millions of dollars representing federal, state and local excise taxes that Texaco has already paid.

As interest rates continued to accelerate, it became apparent that something had to be done beyond the efficiencies which could be implemented within the system. In 1979, these costs totalled $86 million and jumped to $104 million in 1980. Our 1981 costs were over $111 million, a 98 percent increase over 1972. The portion of those costs attributable to carrying the accounts receivable in 1981 increased 523 percent over this same time frame. Texaco concluded it could no longer continue to absorb the ever-increasing cost of the credit card system and some adjustment was necessary.

Faced with these skyrocketing costs we took a hard look at our options.

Texaco studies revealed that there were only a few options available to remedy the situation.

1. We could give up our credit card system.
2. We could maintain the status quo.
3. We could charge our credit card holders an annual fee.
4. We could ask the Texaco retailers and wholesalers, who benefit directly from the use of the credit card system, to share in the cost of maintaining the system.

Careful analysis of our options left us with no reasonable choice but to ask our business partners to help defray some of the costs of the credit card operation that is so vital to us all. We believe it was appropriate and fair to have those who share in the benefits to also share in the costs.

Again possibly what Judge Broderick found at the conclusion of the *Melso & Musser* v. *Texaco* lawsuit would be of some assistance to you. Judge Broderick ruled "higher interest rates and the increase in the overhead cost of administering the credit card program impelled Texaco to impose the 3 percent charge on November 1, 1981," . . . if Texaco wished to continue its credit card program. Moreover the imposition of the 3 percent fee was competitive with other financial institutions who process their own brand of credit card—like American Express, Visa and Master Card.

The eighth point is that H.R. 5362 will actually harm those it attempts to protect.

The advocates of H.R. 5362 would have you believe that this bill will (a) increase the dealer's profitability, (b) result in lower prices, (c) reduce oil company profits and (d) mean more business for the dealers, however, none of this will come to pass simply because the prices oil companies charge for gasoline are not longer controlled by government regulations.

Since petroleum products are no longer controlled, the oil companies are permitted to raise prices as competition warrants, therefore, the oil companies could simply increase their wholesale price for gasoline to retailers by 3 percent thereby recoup their increased credit card expenses. Historically, this is what every oil company did prior to DOE regulations, i.e., increase its wholesale price of gasoline to recover its increased credit card costs.

If Texaco had just increased the wholesale price of its gasoline by 3 percent there would have been no need, in fact, no basis for H.R. 5362, yet the people who favor H.R. 5362 could still make the same arguments, i.e., Texaco's increase in its wholesale price by 3 percent would (a) decrease the dealer's profitability, (b) result in higher prices, (c) increase oil company profits, and (d) reduce the dealer's volume of business. It is abundantly clear then that H.R. 5362 does not even cure the alleged ills for which it was purportedly introduced!

The ninth point to be considered is that H.R. 5362 discriminates against the oil companies who issue their own credit cards by prohibiting the recovering of costs directly from those receiving the benefits of the cards. This bill could seriously undermine the "merchants fee" concept that has been prevalent in the credit card industry since its inception. Why should the oil companies be singled out? Will the Visa, Master Card, Sears, and Marshall Fields credit cards be next? Passage of H.R. 5362 would cause oil companies to take a very hard and critical look at continuing their credit card systems. Is the intent of this bill to force oil companies out of the credit card business? If so, surely the consumer will suffer in the long run. Would not it be better to defeat H.R. 5362 and permit competition to remain unfettered, which, after all, is the American way.

And finally, we are very troubled over the implications or meaning of H.R. 5362 in relation to a franchisee paying a franchisor a "(f)ee, charge, or discount, directly or *indirectly* for honoring a credit card . . ." (emphasis added).

Does "indirectly" mean a company would be prohibited from ever including any of the credit card costs into its product prices? We certainly hope such is not the case because of the serious constitutional and equitable questions which would arise.

CONCLUSION

In conclusion, I wish for you to consider that in the *Melso & Musser* v. *Texaco* case, after hearing expert witnesses for six days on both sides, after hearing testimony and oral arguments and considering hundreds of pages of transcripts, depositions, documents and the arguments of counsel, Judge Broderick found the imposition of the very fee H.R. 5362 would abrograte to be "legal and proper in all respects," and that such a fee is not "unconscionable."

Moreover, the Court "concluded that the consuming public will not be harmed by . . . [a] credit card processing fee . . ." And that such a credit card processing fee "is consistent with public policy as embodied in legislation such as the Cash Discount Act."

We urge you to permit the companies, the retailers and most importantly the public to retain the freedom of choice of decide whether they wish to use their credit cards or pay a lower cash price. We urge you to give great weight to Judge Broderick's scholarly and reasonable opinion for he had the advantage of hearing all the evidence when he decided a credit card processing fee is beneficial for the public. And finally, we urge you to remember what this nation recently experienced regarding government controls when President Reagan decontrolled prices on crude oil, propane and gasoline. Real prices of these products went down. Are we now going to reimpose price controls in the form of H.R. 5362. The inescapable conclusion is that the marketplace is truly the best place to decide whether or not a credit card processing fee is a good sound business decision. In short, we urge you to defeat H.R. 5362 because it cures none of the ills it was designed to cure, instead it simply creates a malady of its own.

Thank you for your patience and your attentiveness.

Mr. **Bedell**. We have a vote on the floor of the House. Without objection, we will recess for 10 minutes.

[A short recess was taken.]

Mr. **Bedell**. The subcommittee will come to order.

Normally, as chairman, I defer to other members of the subcommittee first, but I raced back real fast this time, so I will go ahead and start, in the interest of time. I have a note here reminding me I have a 2 o'clock office appointment. I certainly hope we will be through before then.

Mr. Gunnels, you spent quite a little time going over the situation in Atlanta, which came up yesterday. I need to understand it pretty completely.

You indicated there is a 5½- to 6-cent normal difference between the dealer tankwagon price and the jobber tankwagon price at the rack. Is that correct?

Mr. **Gunnels**. That is correct.

Mr. **Bedell**. You indicated there had been a 3 cent lowering of the jobber price. Is that today's difference?

Mr. **Gunnels**. That was back in March.

Mr. **Bedell**. So now there is a——

Mr. **Gunnels**. No, that is today, 5½ to 6 is today.

Mr. **Bedell**. Previously, was it 2½- to 3-cents difference?

Mr. **Gunnels**. It was about 3 cents previously.

Mr. **Bedell**. A 3-cent difference, so now there is a 6-cent difference, is there?

Mr. **Gunnels**. Approximately.

Mr. **Bedell**. In the testimony we had yesterday it said "Texaco's retail price average of 20 locations." Who owns those stations?

Mr. GUNNELS. Texaco has more than 20 stations in the greater Atlanta area. I don't know exactly, but we must have maybe 50 locations. I believe Mr. Houston was referring to 20 new locations that we have either remodeled or constructed in the last 24 months.

Mr. BEDELL. I guess my question is, are they company-operated stations, or are they independently operated?

Mr. GUNNELS. Those 20 he referred to, the majority of them would be company operations, what we call contractor operations.

Mr. BEDELL. I appreciate the candor of your testimony, so we can get forward on things.

As I understand it, you then have a discount to them if they buy enough quantity, which amounts to 4 cents plus 1½ cents. Is there another plus on there, too?

Mr. GUNNELS. No, sir.

Mr. BEDELL. So it is a 5½-cent discount to them.

Mr. GUNNELS. It is not just to those 20 retailers. That is to all retailers, whether they are company operated or dealer operated.

Mr. BEDELL. You indicated that wholesalers came to you and asked that be discontinued to them. Did you have it for them before?

Mr. GUNNELS. Yes.

Mr. BEDELL. How did it work?

Mr. GUNNELS. Well, the wholesalers had mixed opinions with it.

Mr. BEDELL. No; I mean how did it operate?

Mr. GUNNELS. Oh, exactly the same. Exactly like it did for the retailers.

Mr. BEDELL. So if the wholesalers bought that much more, they got that discount.

Mr. GUNNELS. That is correct.

Mr. BEDELL. You see, it would seem to me that since you removed that, did they only request that they be removed from the discount program or did they request that both jobbers and dealers be removed?

Mr. GUNNELS. That meeting was in February, and the discussion was pretty hot and heavy. I can't remember, Mr. Chairman. We were zeroing in on the wholesale class of trade. They were struggling with it because they could not predict at the beginning of the month how much they would be able to sell. A retailer can better predict that.

Mr. BEDELL. It seems to me that is kind of crazy of them if that is what they wanted, but then people do crazy things, I guess.

[See appendix N for further discussion on this point.]

Mr. BEDELL. Jack, I was going to go ahead since I raced right back, if it is all right.

Mr. HILER. Fine.

Mr. BEDELL. I will finish this so we can go back.

For the dealers that Texaco is supplying in Atlanta, about what percent of the dealers in Atlanta do you supply direct and how many are supplied by wholesalers, would you guess?

Mr. GUNNELS. Mr. Chairman, I would say that we supply directly—and I wish I had the exact numbers—probably 40 stations directly and to distributors, maybe 10, something like that.

Mr. BEDELL. Ten stations supplied by——

Mr. GUNNELS. That is my estimate.

Mr. BEDELL. Those 10 stations that are supplied by distributors, then of the 40 dealers that you supply direct, how many are your own company-operated stations?

Mr. GUNNELS. Something above 20.

Mr. BEDELL. Or more than half.

Mr. GUNNELS. Yes.

Mr. BEDELL. Of the ones that buy from their distributor, they don't get this 5½-cent discount, then?

Mr. GUNNELS. No, Mr. Chairman, they are supplied by the distributor, and he has his distributor buying price, and what he does with his dealer is between him and his dealer. We don't participate in that association.

That is what caused the problem with the distributors' gasoline incentive. The distributor could not really estimate how well he would do. If he lowered his price to increase his volume and didn't make the quota, then he would lose money. It was a stress on the distributor.

Mr. BEDELL. You have 10 stations who are buying from distributors.

Mr. GUNNELS. That is my estimate.

Mr. BEDELL. Why are they buying from distributors?

Mr. GUNNELS. Well, they are distributor accounts. The distributor leases them or owns them or has a sales agreement with them.

Mr. BEDELL. Are some of them owned by distributors?

Mr. GUNNELS. Yes, sir.

Mr. BEDELL. Quite a few of them?

Mr. GUNNELS. Yes, sir.

Mr. BEDELL. Well, then, the situation is, as I understand it, that when those dealers buy from you, is the price that you charge them what they pay as it is delivered to them or do they pick it up at the rack, the same as the jobber?

Mr. GUNNELS. Our direct-supplied dealers in Atlanta are delivered. That is a delivered price.

Mr. BEDELL. You had a 6-cent difference between them?

Mr. GUNNELS. Yes.

Mr. BEDELL. The 6 cents covers the difference between delivered price and the rack price?

Mr. GUNNELS. Yes, that represents the traditional wholesale/retail differential.

Mr. BEDELL. You see, the way this would appear to me would be that if I am a dealer and if the jobber discount is as you testified 5½ to 6 cents lower—I am a jobber that also has a station—this is actually the way it works a lot; is it not?

Mr. GUNNELS. Right, that is correct.

Mr. BEDELL. I buy at the rack for 5½ to 6 cents less than the stores you own buy at the rack. But then you turn around, and if they buy more product, you give them that 5½-cent discount back, so the net effect is that the one competitor is paying the same price for undelivered product that he has to pick up at the rack and deliver to his retail outlet as his competitor is paying for the gasoline delivered to his retail outlet, if I understand your testimony correctly.

Mr. **Gunnels**. Well, it is sort of complex. Let me see if I can clarify it.

Mr. **Bedell**. Tell me what is wrong about what I have said. That would be the quickest way to do it.

Mr. **Gunnels**. Well, it is not quite right.

Mr. **Bedell**. Tell me what is wrong.

Mr. **Gunnels**. Let's talk about the distributor. Let's say that his stations are in Atlanta and he is supplying them. The distributor picks up the gasoline at the rack and delivers it to his service station.

Mr. **Bedell**. It costs him some money, I assume?

Mr. **Gunnels**. It costs him intracity maybe a half a cent a gallon, something on that order. That is about what it costs us to deliver to our accounts. Innercity delivery we normally figure a half a cent a gallon, 20 miles, 10 miles, like that. Now, the distributor would prefer to have this 5½-cent discount on every gallon at the beginning of the month, and at the end of the month. That makes it easy to keep track of what is happening.

Now, our direct-supplied dealer, he has to pay the 5½-cent higher price at the first of the month. He must sell at this high price 50 percent of his base period, which is last December, before he is given any discount.

So you see, the distributor has substantial advantage there until our direct-supplied dealer, through his salesmanship, increases. If he increases his sales, his price then gets smaller.

At 50 percent, we give him a 4-cent discount on every gallon as it is delivered. Now, if he sells 100 percent, if he has a 4-cent discount on half his volume, what he really has is a 2-cent discount on all of his volume.

Mr. **Bedell**. I understand that, but on his additional volume he is paying exactly the same delivered as your jobber is paying.

Mr. **Gunnels**. No, he is getting 4 cents less and the jobber is getting about 5½ cents.

Mr. **Bedell**. I thought it was 4 cents plus 1½ cents of everything he sold over what he had sold before.

Mr. **Gunnels**. If he reaches 100 percent of his last year's figure, that could happen.

Mr. **Bedell**. My statement is: Any gasoline he sells more than what he sold last year he buys at roughly the same price delivered as the other people are buying that same gasoline at the rack undelivered.

Mr. **Gunnels**. On that last gallon, but not on his entire purchase. The average would be much higher.

Mr. **Bedell**. Sure.

Mr. **Gunnels**. On the incremental gallon, you are exactly right.

Mr. **Bedell**. You further believe that a jobber can operate on a half a cent a gallon margin, is that correct?

Mr. **Gunnels**. Well, the jobber would be operating on the average of the month, his total cost for product for the month versus our dealer's total cost for the month.

Mr. **Bedell**. My question is, you indicated you thought it took about half a cent to deliver. You apparently believe that a jobber can operate on about a half a cent per gallon margin within a metropolitan area.

Mr. Gunnels. No, no. The jobber could not do that over a long period of time.

Mr. Bedell. But at this time he operates on zero margin on the amount of gasoline for any increased sales that are made by any of the stations?

Mr. Gunnels. Any incremental over last year's sales. That is our effort to retain our share of market.

Mr. Bedell. Have you built any new company-operated stations in Atlanta in the last year?

Mr. Gunnels. Yes, sir, we have. We have a rebuilding program. Our stations since World War II, they are becoming old and obsolete. They are aging, and they are worn out. We have a rebuilding program.

Mr. Bedell. How do you operate that for a new station?

Mr. Gunnels. We operate them both ways.

Mr. Bedell. No; I mean the rebate. How does the 4 cents and 1½ cents operate if you don't have anything to go by on what it was before?

Mr. Gunnels. We just make an estimate of how much it would sell. Let me ask my attorney. I think that is how they do it. Our stations average about 50,000 gallons in the aggregate. All of our stations average about 50,000. If we didn't have anything to go by, we know pretty well what we can sell on any given corner, so we make an estimate, and that is your base period.

Mr. Bedell. Would that 50,000 be roughly what you would probably establish as the baseline for a new station?

Mr. Gunnels. That would be a good figure for a typical corner.

Mr. Bedell. Those that you are building, are they——

Mr. Gunnels. Those that we are building—and we have something over 20——

Mr. Bedell. I am not sure we are understanding each other because if I understood you, you are saying that for these new stations that you are building you would probably set a goal or a base of about 50,000. That shocks me. Are you sure that is accurate?

Mr. Gunnels. Mr. Chairman, I am getting some advice here in this ear and I didn't quite hear what you said.

Mr. Bedell. I think that is probably a good idea.

Mr. Gunnels. Let me tell you what he told me.

Mr. Bedell. OK.

Mr. Gunnels. I should know it. What we do on a new station, we ask for a computer model of that location to be run. We use an outside service, a company down in Tulsa, with very excellent results. They can take the traffic count, the location, all of the factors that bear on the volume, run it through their computer model and tell us within a very close tolerance how much that station will sell if we build it and priced competitively. Counsel here advises me that is the figure, the computer model figure, that we use for the base period.

Mr. Bedell. Do you think that would be about 50,000 gallons?

Mr. Gunnels. No; I think it would be higher than that. We wouldn't really build a station these days if it would only do 50,000. We are already doing an average of 50,000.

Mr. Bedell. How many stations have you built in Atlanta in the last year?

Mr. **Gunnels**. Something over six.

Mr. **Bedell**. Would you feel comfortable or would you feel it was proprietary information to let this committee know what you had set as their goal, the base they would have to reach in order to get that extra?

Mr. **Gunnels**. Oh, I would have no problem with that. Let me ask my adviser here.

Mr. **Bedell**. All we want to know is just the base that you set there, to see if it seems reasonable.

Mr. **Gunnels**. I have no problem with that.

Mr. **Bedell**. Fine. We would appreciate it if you would do that. If you want to, you can just give us the average, even, if that would make you more comfortable.

Mr. **Gunnels**. All right.

[Note.—The subcommittee was subsequently advised, "The average gallonage established for the seven outlets Texaco has opened this year in and around Atlanta is approximately 97,300 gallons per month." See appendix M.]

Mr. **Bedell**. The figures that were given to us by some people yesterday—you were here when they testified—they indicated that the retail price in your locations in Atlanta is $1.095, or the average that they checked out. Does that seem reasonable or not?

Mr. **Gunnels**. Yes. I haven't been to Atlanta in a couple of months, but that is about what it was when I was there.

Mr. **Bedell**. Did you get those figures that they gave us? They said that the tankwagon price is higher than what you are selling the gasoline for at your company-run retail stores. Is that accurate?

Mr. **Gunnels**. Let me tell you what information I just received. We don't have that information that was presented here yet. I assume we will get that. It is possible for a retail price on the street to be lower than the retailer tankwagon. With the action of our rebate program, if a retailer greatly increased his sales maybe by 50 percent, and if he used composite pricing, and if he were willing to have a very small margin on one of his grades, it would be possible on the last gallons that he could do that.

Mr. **Bedell**. But he has to do it on all gallons if he is going to sell it at that price. A dealer doesn't say, well, the first customers get it for this price and the next customers get it——

Mr. **Gunnels**. They change their prices at their discretion, and many times they will reduce their prices——

Mr. **Bedell**. Yesterday's witness also showed in his table that rent was 5 cents a gallon. Do you charge your rent by the gallonage?

Mr. **Gunnels**. No, sir; let me talk about rent just a minute. We have taken the position on rent that we would like to recover an economic rent at each location where we have the property or have it leased.

I heard some very big figures here yesterday about rents. Let me say to you that our average service station rental is more in the area of $1,200 a month. We don't have these $14,000 stations; maybe I wish we did.

Our rental has increased—and I checked it before I came in here—something over 170 percent in the last 10 years. We have changed from the gallonage rent over to a flat rent. Our retailer just pays so much, and I mentioned it averages about $1,200. He pays that on the first of the month.

The Consumer Price Index over that same period has increased 151 percent, so it is something a little better than the Consumer Price Index.

Mr. **Bedell**. Do you have a management contract with those people that operate your own stations?

Mr. **Gunnels**. Here is how that works. We hire somebody. It can be an individual. There are little businesses that make a practice of doing that, and we hire them by the hour. We pay some concern so much an hour to operate our units. We have a number of different ones. It is not just one. We might have 5 in Atlanta, or 10, different contractors.

Mr. **Bedell**. Mr. Hiler?

Mr. **Hiler**. Thank you, Mr. Chairman.

I think I am still a little bit confused on your pricing mechanism in Atlanta, rather. I probably would be very confused what it was in Detroit, too.

I think really it is at the heart of what a lot of the discussion has been about the last couple of days because there have been some very serious charges or accusations made that there is anticompetitive behavior going on, that you are trying to drive your branded dealers out of business, that you are charging uneconomical rents which are having the effect of gouging them, and that you are engaged in predatory pricing, if not in the technical sense of predatory pricing at least in what might be a common perception of the meaning of the word predatory pricing.

I would like to go through it again just so I can understand it. You said early on in your testimony you have two prices at your terminals. You have the same pricing structure throughout the country, wherever you happen to operate, and that at every one of your terminals you have two prices: you have the wholesaler price, and you have a retailer price.

Mr. **Gunnels**. That is correct.

Mr. **Hiler**. That is not a delivered price, that is a price that you have at the pump; that is, you start out with two prices at your terminal?

Mr. **Gunnels**. It is a delivered price for the directly supplied retailers. It is a rack price or origin price, terminal price, not delivered for the wholesaler.

Mr. **Hiler**. OK. So for your distributors you have a rack price and for your dealers you have a delivered price?

Mr. **Gunnels**. Yes.

Mr. **Hiler**. OK; it is a delivered price. Now, when you sell to your distributors, your distributors you said on average have about a 5½-cent per gallon less price starting out?

Mr. **Gunnels**. That is correct.

Mr. **Hiler**. OK. Now, in Atlanta you said that you have about ten distributors?

Mr. **Gunnels**. No, I said the distributors—and this is my estimate—would have about 10 stations, or retail outlets.

Mr. **Hiler**. The distributors supply about 10 retailers? That is correct?

Mr. GUNNELS. Yes.

Mr. HILER. Of those 10 retailers, some of those are owned by the distributors?

Mr. GUNNELS. Yes.

Mr. HILER. Are all of them?

Mr. GUNNELS. I don't know, Mr. Chairman.

Mr. HILER. OK; we will just say some of them. That distributor sells to either his own station or to another station at a price that that distributor determines?

Mr. GUNNELS. That is correct.

Mr. HILER. Now, we start out on the other side where you sell to the dealers. Now, you have two kinds of dealers. You have the dealers that in a sense you own, company-owned dealer, that you contract out the management of that particular thing, and then you have what might be the service station-owned, the lessee.

Mr. GUNNELS. That is correct, the conventional service station.

Mr. HILER. The conventional service station. Now, the price that starts out going to both of those groups is the same, it is about 5½ cents higher than what you are selling to the distributor?

Mr. GUNNELS. That is correct.

Mr. HILER. And that is the delivered price to wherever that station happens to be?

Mr. GUNNELS. I should clarify that. That would be true in the immediate metropolitan area. If the retail outlet is 50 miles out and is in a different zone, the freight would be added to that, and that retailer price might be a half a cent or a cent higher, but all of them would be that higher price.

Mr. HILER. So when you say you don't have zones, you don't have zones for your retailers. You do have transportation zones, however?

Mr. GUNNELS. That is right. They are really freight zones around the terminal.

Mr. HILER. OK, that makes sense.

These dealers, when you sell to a lessee, when you sell him his gasoline, it is based on some type of quota. If they sell 50 percent of their quota from the base from a year ago, after that point they get 4 cents a gallon discount?

Mr. GUNNELS. That is right.

Mr. HILER. From 50 percent to 100 percent they get that 50 percent of the gallons, they get a 4-cent-a-gallon discount, so for the entire 100 percent, if they sold the entire 100 percent, they would actually have cut their price 2 percent?

Mr. GUNNELS. Two cents.

Mr. HILER. Two cents?

Mr. GUNNELS. Right.

Mr. HILER. So, if you have a distributor that takes 100 percent and you have a dealer that takes 100 percent, the actual net difference in cost is going to be about 3½ cents?

Mr. GUNNELS. That is correct.

Mr. HILER. Although one is delivered and one's rack price, so it is going to work out less than that?

Mr. GUNNELS. That is correct.

Mr. HILER. If they go over 100 percent, you then add an additional 1½ cents on all gallons?

Mr. **Gunnels**. For the retailer only.

Mr. **Hiler**. That is for the retailer only. So if somebody sells, let's say, 150 percent, they will actually have had their price cut 3½ cents for the entire stock?

Mr. **Gunnels**. That is correct.

Mr. **Hiler**. When you sell to your own company-owned retailed outlets, that same pricing mechanism operates?

Mr. **Gunnels**. Yes; where we have a contractor-operated station, a company station, all of the same rules apply that apply to any retail. All rules apply to the retail class of trade, so we apply the same rule to the company station as we do to the dealer stations.

Mr. **Hiler**. OK, do you have a c.o.d.?

Mr. **Gunnels**. Retailers, yes.

Mr. **Hiler**. Do your company-owned retailers have a c.o.d.?

Mr. **Gunnels**. Yes. Mr. Chairman, all the gasoline sold to our retailers and company stations are c.o.d. We collect for the gasoline at the time of delivery.

Mr. **Hiler**. Your attorney wants to talk to you there.

Mr. **Gunnels**. Sir?

Mr. **Hiler**. I didn't know whether there was an additional comment that was going to be made or not.

Mr. **Gunnels**. I was going to comment that if we didn't sell for c.o.d., we would be in a world of trouble.

Mr. **Hiler**. In all due respect, I am just curious, and the gentleman who testified yesterday from Georgia, he has been before this committee before many times over the last few years, very reputable witness, he says that you are selling—that the average retail price of the stations, your company-owned stations, are from this about 1 cent lower than what they can buy it from you for.

What I don't understand is, if somebody sells—what is your average—do most of your people sell 80 percent of their base or 90 percent?

Mr. **Gunnels**. They will offset their last year's sales. The whole idea is to sell as much as they can. Let's say that most of them are at 100 percent of last year.

Mr. **Hiler**. Let's say they are at 100 percent. They have got a 2-cent discount. Let's say that your company-owned pumpers are at 150 percent, so their price is 3½ cents less, so that is 1½ cents, and you are selling that for almost half of that penny and a half, three-quarters of a penny less than what their average cost of buying it is, and is not including whatever it takes: the rent, the surcharge, the contracts. How does it work, or are their figures wrong?

Mr. **Gunnels**. What Mr. Houston was reporting to you was what he saw posted on the street. That is only one product. That is why I talked about composite pricing. The retailer may have an extremely low margin on one grade, but generally his composite margin will be that necessary for him to survive, which would be more like 6 or 8 cents.

Mr. **Bedell**. Would the gentleman yield?

Mr. **Hiler**. Certainly.

Mr. **Bedell**. He gave us all three: regular leaded, regular unleaded, and premium unleaded. There was some differential, a fairly decent differential in the premium unleaded, but in the regular unleaded it was only a cent and a half difference.

Mr. HILER. All I can say is the people you subcontract out to must have one heck of a good management operation.

Mr. GUNNELS. We have a number of contractors.

Mr. HILER. Got about five.

Mr. GUNNELS. They are paid by the hour. We are pleased with them.

In the overall, we closely monitor the situation so that our retailers are not selling below the wholesaler's buying price. That is not right. That just shouldn't happen.

In a rare case, it could happen. If some retailer had a large increase in sales, say 200 percent, and he was willing to take a very low margin composite, some retailer somewhere, it could happen.

We watch that very closely. We monitor it every morning. Mr. Yetter here is charged with that responsibility. We do not agree with trying to undersell our retailers. We like our retailers. We are trying to build them up.

Mr. HILER. What kind of rent do you charge your retail operations, your own company-owned retailers?

Mr. GUNNELS. Exactly the same rent computation that we would if it were retailer operated. Many of our new stations are retailer operated. We have no problem operating with retailers. We like retailers. We have been a retailer-operated company for 70 years.

Mr. HILER. Would you say—and this is my last question—that the attitude and the comments that you heard yesterday from a variety of some Texaco people and some other folks who were in associations who certainly have Texaco retailers in their associations—I am in business back in Indiana, and I would say that if my employees felt that way about myself and the managers of my family's company the way those folks somewhat felt about you, I would be quite concerned about the future direction that my company was going in.

Do you think that their attitude is typical today, atypical? Do you think these folks didn't represent the average retailer out there and wholesaler, or do you think they do? Are you concerned about this? Are you alarmed about it?

Mr. GUNNELS. Yes, we are. Mr. Congressman, we actually have 1,171 wholesalers. There were only two here yesterday, both very articulate. I am well-acquainted with them. But if you brought all 1,100 through here I think you would get a somewhat different picture.

Here is what is causing the pressure: At our last Wholesaler Council meeting we spent two days reviewing what can be done, and at the end of that meeting I asked the council, "You know everything we are doing. What can we do, what can you suggest that we can do? We plan to stay in business. We plan to keep our share of market. We are not making any money with gasoline."

Here was their reply. They told me,"We really don't know what we want you to do. We simply know that somebody has got to do something. We don't want legislation, but we know that the market is getting tighter and tighter."

It is an extremely competitive market. I have been in marketing 35 years. It is the worst market I have ever seen. Some people are not going to survive. I think our wholesalers will. We are not having bankruptcies, we are not having the real bloodletting that you heard here, but it is a tough, demanding experience that we are going through.

My experience tells me it will change. It always has. We have been through these before. We have been through just the opposite of what we have today, where we have shortages of product, but this just happens to be an extremely difficult time for gasoline marketers. They are reaching out, trying to figure out how to get some help.

We have asked them how can we help, what do you want us to do. It is a tough question to answer, and we don't have the answer yet.

Mr. HILER. Thank you very much.

I yield back, Mr. Chairman.

Mr. BEDELL. Thank you, Mr. Hiler.

In all fairness, Mr. Meintzer, who we had before us, as I understand it, said,

> I am a member of the executive committee and former president of the National Association of Texaco Wholesalers, on whose behalf I am testifying today. . . . In 1981, NATW members distributed approximately 62 percent of the motor gasoline marketed by Texaco wholesale distributors in the United States. . . . I am also chairman-elect of the National Oil Jobbers Council Texaco Brand Steering Committee.

Maybe that is irrelevant, but I don't think it would be precise to say that we don't have any problems, that he is just somebody that came in and——

Mr. GUNNELS. No, he is well-qualified and a good businessman and a good customer.

Mr. BEDELL. I will try to get through in 5 minutes because we have a vote on the floor of the House right now, and that will be kind of a record for me to get through in 5 minutes.

You said you charge the same rent for your stations, whether you own them or whether you don't. About what does that rent run per month for a new station? Is there a formula?

Mr. GUNNELS. Yes, we have a formula. I can't tell you exactly what it is right now. It is an economic formula. On the average, of the 3,000 stations that we charge rent for are running about $1,200, average. On a new station it probably would be double that.

Mr. BEDELL. That sort of answers Mr. Hiler's question a little bit because at $1,200, if you sold 100,000 gallons of gasoline, that would be 1.2 cents that they would have to pay in rent, which takes care of the whole margin. They would have nothing left, I would think, for your operating costs or credit card surcharge or anything else.

I agree with Mr. Hiler you are sure doing something different if you can operate that way at those prices and make a profit in the stations that you are operating at.

Do any of your distributors in Atlanta sell to other dealers? Do any of them really operate as distributors where they buy gasoline and sell to a dealer?

Mr. GUNNELS. Yes, sir.

Mr. BEDELL. Those dealers, then, do not have the benefit of this 4 cents and 1½ cents rebate that your customers—that you sell direct?

Mr. GUNNELS. That is correct.

Mr. **Bedell**. Aren't they darn fools for buying from those jobbers?

Mr. **Gunnels**. Every deal has to stand on its own. Our distributors——

Mr. **Bedell**. How does a distributor ever keep those customers? I should think you would take them all away from your own distributors.

Mr. **Gunnels**. Well, he can supply them and still make a——

Mr. **Bedell**. Would you supply them if they wanted to buy from you?

Mr. **Gunnels**. Well, if they weren't in conflict with one of our other stations, yes, if they came to us. We would not solicit one of our distributors.

Mr. **Bedell**. I don't think you would have to. It seems to me they would be out of their mind if they could buy gasoline for 5½ cents cheaper from you than they can from your own distributors, I don't understand how the jobbers could keep a customer unless that customer has declining volume, where it wouldn't really matter.

Mr. **Gunnels**. That is the problem. The only way to get the low price is to have high sales, to have a high quantity. All of those dealers have to pay the high price for the first half of the month.

Mr. **Bedell**. We have said that so many times. I think we understand that. We are so short on time. Do you limit the supply to your distributors to the amount they contract for, as Arco does?

Mr. **Gunnels**. Yes; we have a contract maximum.

Mr. **Bedell**. Do you limit your direct dealers to that amount?

Mr. **Gunnels**. No, sir.

Mr. **Bedell**. Well, I only have 5 minutes and I hadn't better get started on that one.

On your credit card surcharge—you have a credit card surcharge, do you?

Mr. **Gunnels**. Yes, sir.

Mr. **Bedell**. It was pointed out yesterday that actually you will make a profit on the tax increase, on the credit card surcharge. My question is whether you do or do not, do you believe it proper for you to make a profit on the gas tax increase through your credit card surcharge?

Mr. **Gunnels**. Mr. Chairman, that is a new subject that has just come up. We are working on that problem right now, but let me address your question.

First, we would not make a profit on any increase in tax. Here is how that surcharge works. The surcharge, the only time we charge that, is when we incur a receivable. That is our money that is out. It takes us 55 days to get that back.

Mr. **Bedell**. Doesn't he have to pay the tax on that?

Mr. **Gunnels**. We have already paid the tax on that.

Mr. **Bedell**. No, no. Doesn't the dealer have to pay the tax on that surcharge? They indicated they did. They indicated you add that to the price of gasoline and the tax would apply on that.

Mr. **Gunnels**. No; let me tell you how that works. If a retailer has——

Mr. **Bedell**. At least you don't think that is the case?

Mr. **Gunnels.** No, no. We would not make a profit on that. We would not want to. That is not our intent. We are just trying to save our——

Mr. **Bedell.** If he is right that you do, you do not think you should, is that right? You would not intend to and you don't think——

Mr. **Gunnels.** That is not our intent at all. We are trying to cover the cost of our receivables only.

Mr. **Bedell.** Sure.

Thank you very much for your testimony.

Mr. **Gunnels.** Thank you, Mr. Chairman.

[See appendix D for further discussion of Texaco's marketing practices.]

Mr. **Bedell.** We will let you go and run vote. We have got 30 minutes to try to cover the other three people.

[A short recess was taken.]

Mr. **Bedell.** The committee will come to order.

We have a real time problem. I think we have asked too many questions maybe. I have a 2 o'clock appointment. I may have to recess for 1 minute or 2 to take care of that appointment. We will try to rush through. I think we have had our stars on already, so I don't want to indicate anything differently.

You are Mr. Bittles?

Mr. **Bittles.** Yes.

Mr. **Bedell.** We appreciate your being here. We would appreciate it if you would make it as short as you can.

Mr. **Bittles.** I will make it real quick. I am not sure I like being called a nonstar in relationship to this.

Mr. **Bedell.** I realize that was probably not——

Mr. **Bittles.** I understand what the problem is.

Mr. **Bedell.** I think maybe you ought to be complimented for that today, probably.

Mr. **Bittles.** All right, I will take it that way. Thank you.

TESTIMONY OF W. J. BITTLES, JR., VICE PRESIDENT OF SALES, SHELL OIL CO.

Mr. **Bittles.** Mr. Chairman, you obviously hear a lot of the problems and you hear some horror stories. Let me just say to the committee one thing that I think is important: In your analysis, in your studies and in the research you do, that you are able to tell the difference between what really is a practice that an oil company or whoever has committed, that maybe has been illegal or maybe it has been ethically wrong or morally wrong, versus what is happening in the market in the shakeout of the inefficient, I think there is quite a difference.

I think some of the stories that you do hear really come from people who have not stayed with the times, have not adjusted their business practices. They are finding it very difficult to compete.

I know there is no question about that. There are probably some examples where people have not acted properly, but that I think is a different kind of thing. I don't think you can put all those things together and put them in one basket.

I think when you find out the ones that are the result of what is going on in the marketplace, you will find there is a goodly percentage of those. As someone said today, there have been 10 or 12 percent of buyouts or people going bankrupt.

I am sure the percentage of jobbers who have gone bankrupt, is considerably less than that. There are a lot of jobbers that have sold out. There are a lot of jobbers that have merged because it makes economic sense to do that, not necessarily that it was a bad thing. Why would somebody buy it if it were a bad thing? They just wouldn't.

Let me just add that we have been a dealer—and a jobber—company ever since I have ever known anything about Shell. I have been with Shell for 34 years, and I have spent my entire life in this part of the business, working with both dealers and jobbers.

For anybody to have the idea that we intend to run dealers and jobbers off, that is totally untrue. In fact, my 34 years with Shell would go down the drain if that were the case because I have spent my entire life attempting to develop programs and implementing programs to make these very people successful. Without them, without our dealer organizations, that we are extremely proud of, and without our jobber organization, that we are extremely proud of, we would be out of business. So, we really need these people as a way to market the gasoline and other products that we make. Without them, there really isn't a Shell Oil Co., and I think that really has to be understood. I sincerely mean that.

Just in a real hurry, we have many, many programs that are designed to benefit both dealers and jobbers, from our auto care program to the variable rent program to our credit card program. We are constantly coming up with and trying to develop marketing techniques that will further the success of these very dealers and jobbers, because if they are not successful, we are not successful.

I think one of the solutions to many of the problems that I have heard here today and read about yesterday is probably the need for better communication between the supplier and the customer. We have innumerable programs—I won't even list them all or mention them all—that do that very thing.

I think we have a very close relationship, I think we have a very good rapport with both our dealer and jobber organizations. It doesn't mean from time to time we don't have a difference, but on balance it is a very good and strong relationship. We are prospering together.

Let me end there, in view of the time problem that you have.

[Mr. Bittles' prepared statement follows:]

Prepared Statement of W. J. Bittles, Jr., Vice President of Sales, Shell Oil Co.

Thank you, Mr. Chairman. My name is Bill Bittles, Vice President, Retail Sales for Shell Oil Company. I am here this morning to discuss some of the changes that have occurred recently in gasoline marketing practices. We at Shell, as well as many others in the industry, have witnessed a period of rapid change in some of these practices during the past year and three quarters since the end of federal controls. I would like to discuss some of the problems that are perceived, the solutions being proposed by some jobbers, dealers, and legislators, as well as Shell's position regarding these proposals.

On one hand, there has been some clamoring recently from various groups within the industry concerning the reduced profitability of some branded marketers allegedly because of changes in gasoline marketing practices being made by their major suppliers; and on the other hand, there are charges by some private brand marketers of major oil companies subsidizing their marketing operations. While I am sure there are some real problems for some marketers in the current highly competitive market, we believe any move toward increased regulation as a solution is a totally incorrect method of dealing with the problem. History has taught us regulations create rather than solve problems.

Where problems exist, they are a result of the market forces at play that were artifically frozen for eight years by government regulation rather than any alleged predatory marketing practices or marketing subsidization by the major refiner marketers.

First of all, let me review briefly what has happened to the market for oil products over the past decade. After almost 30 years of continuous growth, the petroleum industry is now facing a sustained declining market for its products. Refined products and motor gasoline demand is down almost 20 percent from an all-time high in 1978. Demand is predicted to decline, or at best be flat, into the foreseeable future.

There are three basic reasons for this decrease in demand. One is that the world price of crude oil jumped from $12 a barrel in 1978 to $34 a barrel in 1982 and as a result, product prices have almost tripled in the past five years with demand reflecting the customer response to price.

The second reason is the economy. The current recession adversely affects gasoline sales in the same manner it impacts the economy in general—demand is down.

And the third reason for the decrease in demand is this nation has been conserving energy, using less gasoline by changed driving habits, cars becoming more fuel efficient, industry conserving energy, homes being insulated better, and the use of more energy-efficient appliances. We are all actually responding to the economic realities of higher energy prices.

While these are the major factors overhanging the market for oil products, there are also others. One is refinery over-capacity, not only in the United States, but also throughout the world. The U.S. is currently running its refineries at less than 70 percent of capacity. Almost one million barrels a day of distilling capacity has already been shut down in refineries of all sizes. It is doubtful whether another refinery will be built in the U.S.A. during this century.

Secondly, since the 1973–74 embargo, many adjustments have been made either by government or by the oil industry itself. As economics have changed, many companies have consolidated their operations. Shell, for one, has sold more than 3,500 of its service station properties, sold one of its smaller refineries, reduced its workforce in sales from approximately 1,500 to 900, and switched 77 of its retail market areas from directly-supplied dealers to jobber operation.

Decontrol also changed the picture for the many businesses engaged in petroleum marketing. After eight years of regulations, the industry in February 1981 was allowed to return to a free competitive market. Up to that time, many businesses in the various levels of refining-distribution-marketing remained in their "status quo" method of operation—coasting under the protective umbrella of regulations.

Other businesses became new entrants, specifically seeking to take advantage of the regulations. Still others prepared for decontrol and the resumption of a competitive marketplace.

The changes experienced have imposed harsh circumstances on many—and there has been a considerable shake-out in the industry—a shake-out of refiners, dealers, jobbers, and others. But the consumer is benefiting.

The industry advocate long and hard for decontrol. In the long run, it is the free market that brings society the most benefits. Competition in a free market forces the development of the fittest, most efficient and creative businesses whether they be refiner, jobber or dealer.

Since decontrol many suppliers have decided to change historic marketing practices frozen by regulations for the better part of the proceeding decade. Among these changes have been adjustments to the prices charged to jobbers and dealers to reflect more fully the costs and relative profitability of each of these classes of trade. These adjustments have taken a variety of forms including the move away from designation pricing for jobbers to terminal pricing which doesn't afford the opportunity for freight subsidies to distant points from the terminal. Differences in logistics, selling, and administrative costs should be fairly reflected in the marketplace in our opinion, and not subsidized by other marketers. Faced with high credit costs, some companies abandoned their credit card programs; others began to seek ways of recovering that cost by passing it on to dealers, to consumers, or both.

Charges have been made by some segments of the unbranded independent marketers that since decontrol major oil companies have subsidized their marketing operations with profits from crude oil production and are competing unfairly with the independents. At Shell, we are not subsidizing our marketing operation from any source. Marketing stands on its own. In fact, some of the changes in marketing practices that some of the branded marketers have the greatest concern about are the result of attempts to make sure that no subsidization occurs in total marketing and/or by class of trade. All the changes occurring in the marketplace have affected dealers and jobbers, as well as their suppliers. Some dealers, jobbers and suppliers will not survive. Those who are fearful of survival are looking to government for solutions as they say: What will happen to my business, my career, and my future if these conditions continue?

It must be noted that in this period of declining markets and refinery closures, not all marketers have been adversely impacted. For example, while major branded products have declined in market share as customers become more price conscious, private brand marketers have increased their market share from 22.8 percent in 1975 to 32.5 percent. Major brand dealers and jobbers by their more recent actions in the marketplace appear to be unwilling to continue to lose market share to private branded marketers.

In addition, jobbers are now selling more than 50 percent of all motor gasoline in this country. Shell is still a jobber/dealer oriented company. For example, during this year alone, we have entered into franchise agreements with new jobbers in Louisiana, Virginia, Ohio, Texas, and Maryland. In addition, by supplying a new large jobber operation, we have reentered the state of Arkansas, where we had previously substantially reduced operations.

Shell believes in working with its jobbers in an attempt to understand the current competitive market. Jobber workshops are held in each state where we market. Shell has a jobber management training school. Jobber legislative seminars are held periodically. We participate in Brand meetings of the National Oil Jobbers Council at both the state and national level. In addition, we have a Shell Jobber Council which is a group of jobbers, selected by their peers, who meet with Shell management to discuss problems of mutual interest. For dealers, we have a Shell Dealer Council, and we hold dealer meetings periodically.

Currently, some jobbers and dealers are calling for the government to reintroduce controls in the marketplace: divorcement, open supply, prohibition of credit card processing fees, minimum markup, and so forth. These are words we hear not only from jobbers and dealers, but also from legislators seeking to resolve the programs of the small businessman in the marketplace.

But what would more regulations do to the marketplace?

Let's talk about divorcement.

Divorcement would prohibit major refiners from operating their own service stations. It is contended that the majors, independent refiners, and chain operators, are driving jobbers out of business, and that dealers and jobbers need the protection offered by legislation. In the few states where divorcement has been tried, it is certainly not evident that any problems have been solved. It now appears that divorcement has not solved the competitive problems of the marketplace, and the dealer and jobber margins have not improved because competition has been reduced through elimination of major branded salary stations.

Further divorcement legislation is unnecessary because existing laws already protect dealers and jobbers—

The Sherman, Clayton (as amended by Robinson-Patman Act) and FTC Acts, protect dealers and others against anti-competitive pricing practices and prevent refiners from acting in a predatory manner. Witnesses representing the D.O.T., F.T.C., and D.O.E. have all testified in opposition to divorcement bills.

The Petroleum Marketing Practices Act protects branded dealers and jobbers against arbitrary franchise terminations or non-renewals.

Most importantly, for Shell and presumably many other refiners, dealers and jobbers are essential to our long-term marketing strategy. Therefore salary stations are clearly not a threat to our dealer network or jobber's business.

In a competitive marketplace some business successes and some failures are inevitable and the losers will always be looking for protective special interest legislation. However, the basic principle of antitrust law which contemplates the protection of competition, not individual competitors, must be adhered to if consumer interests are to be served and high productivity perpetuated. In our opinion, station closings reflect changing marketing conditions, population shifts, urban renewal, road changes, and consumer preference for high speed, cost efficient, self-service operations. They do not reflect any massive movement by Shell or industry into refiner-operated salary programs.

Department of Energy statistics have good news for jobbers. They say jobber business is expanding at about the same rate that dealer business is declining, and that most salary-operated stations are run by non-majors, e.g., the largest independent refiners, jobbers and chain operators. Thus, divorcement of the major refiners will not resolve the perceived problems.

Then there's so-called "open supply" legislation:

Provisions under proposed "open supply" legislation would allow branded dealers to sell gasoline purchased from other suppliers in a manner which could adversely affect the motorist. A motorist pulls into a service station expecting to purchase a particular brand of gasoline, with the product and performance characteristics and consistency associated with that brand. The consumer has the right to be protected from deception, mistake or confusion; but with proliferation of more than one brand of gasoline being sold at a station, there would be an increased chance of product adulteration cf commingling. In the event of a product quality problem, the consumer would have difficulty indentifying the culpable manufacturer.

Increased variations from environmental standards could take place. If lead is found in unleaded gasoline, or unlawful concentrations of alcohol as happened in the widely publicized St. Louis, Missouri, case earlier this year, responsibility could be difficult and perhaps impossible to ascertain.

In summary, our primary concern is that an open supply law could lead to widespread marketing of several brands of gasoline at a given station, and that such a practice would result in substantial confusion, uncertainty and perhaps deception to the motoring public. In the long term, we feel that widespread multibranding may cause Shell and perhaps others to stop building and supplying branded service stations and ultimately withdraw from branded gasoline marketing.

There's been a lot of talk about prohibiting credit card processing fees.

Shell perceives the credit card as a major selling tool for its dealers and jobbers. We have embarked upon specific campaigns to promote new credit card business for our dealers and jobbers at a time when many competitive companies are either eliminating the card or placing a processing fee on credit card business received from dealers and jobbers.

While Shell does not impose a processing fee on its dealers and jobbers for accepting the Shell credit card, we do not believe this option should be closed to any supplier as it may mean the difference between retaining or losing a credit card program for some suppliers and their dealers and jobbers. The costs associated with a credit card program have spiraled in recent years. Credit card processing fees are one way the credit card industry has offset these costs. Prohibiton of similar processing fees by oil companies would be discriminatory and unfair.

These fees do not constitute "double dipping" as some jobbers and dealers contend. They say the cost of a credit card program is already recovered in the wholesale price they pay for gasoline. But a processing fee merely separates the cost of credit from the wholesale price of gasoline. Such a system could give dealers greater flexibility in pricing decisions.

Should credit card processing fees be prohibited, the industry might need to consider other means by which to recover its credit costs. One would be a periodic fee assessed each cardholder, although surveys have shown this would be an extremely unpopular move with oil company credit card holders. Another alternative would be to discontinue company credit cards, but that would mean abandoning a program that we at Shell have used over the years to generate for us and our dealers and jobbers significant customer loyalty and accompanying sales volume.

Another unfair solution would be so-called "minimum markup" legislation.

"Minimum markup" legislation, sometimes called "fair trade" or "sales below cost" laws, can take many forms and there are a variety of proposals for such legislation. Some versions would prohibit refiners from selling motor fuel below cost or at different prices to persons on the same and/or different distribution levels.

Advocates for minimum markup say refiners who operate salary service stations are subsidizing the retail segment of the integrated business. They add that independent dealers and jobbers cannot survive when having to compete with this market subsidization. There has never been any evidence to support this contention.

Existing laws very clearly prohibit predatory pricing practices. Without subsidization, predatory pricing could not exist. This subsidization could occur if one aspect of the business, such as refining, were to make up for the loss in the marketing segment of the business. Subsidization has been studied in depth by the Department of Energy, and its report states that there has not been "subsidization" of marketing operations by the petroleum industry.

Additionally, minimum markup legislation is a form of price controls. Controls existing during most of the '70s tended to restrict competition. The evidence is clear that these controls resulted in higher consumer prices in some markets during periods of normal supply. Our experience tells us that all forms of price controls tend to result in higher average prices and sometimes one group of customers at the expense of another.

Minimum markup proposals could foul supplier/customer relationships because they do not recognize that most major refiners are primarily wholesalers. Generally different classes of customers receive different prices which reflect the competitive structure of different classes of trade in the marketplace. As we interpret some of the current legislative proposals, it could be difficult for us to serve both jobbers and dealers from the same terminal. If this is true, the survival of one of these classes of trade is threatened. Obviously this cannot be the intent of the Congress.

Then there's the free market philosophy.

Shell is of the belief that the actions of the free market will sort out the many upheavals currently being experienced in the newly decontrolled marketplace. As I mentioned, changing market conditions and consumer preference cause openings of new service stations and closing of old, uneconomic service stations. We believe that a strong dealer-jobber network is to the mutual benefit of Shell, its dealers and jobbers, and the consuming public.

We also believe that three types of operations will continue to provide the best service to meet consumer preference and the expanding and contracting market. These are dealer-operated stations, salary-operated stations, and jobber-operated stations. Certainly if additional regulations and controls would be of any benefit to our dealers and jobbers, we would support them.

Dealer stations.—Dealer stations are an important segment of the gasoline marketing business. Shell supplies about 5200 independent dealers who sell approximately 63 percent of our gasoline. These dealers enhance our brand value by providing clean, efficient service stations in good locations, and by offering such customer services as credit cards, choice of full service or self service, and AUTO CARE.

Salary stations.—Shell has about 120 salary stations selling approximately two percent of our total gasoline sales. These operations are important for us to gauge and evaluate market changes, new marketing concepts, new equipment and products, and for the training staff. Moreover, these are stations where Shell is taking the financial risk and making significant capital investments. However in many cases the benefactor of such an operation will be the dealer who eventually may have the opportunity to take over that operation as a going business.

Jobber stations.—For Shell, they sell approximately 30 percent of our gasoline volume at their service stations. As stated earlier, Shell has taken on additional new jobber business since decontrol. We expect the jobber to continue to be a significant part of our marketing distribution network.

In a time of product surplus, like now, it is not unusual to have keener price competition to get the consumer's business. This keener competition translates from time to time in lower margins for dealers, jobbers, and suppliers. There is nothing mysterious about this. Nor, is it bad. It is a fact of economic life in the American private enterprise system.

That obviously brings me to Shell's position.—Shell firmly believes in the free market system with emphasis on active responsible management by the corporation and its dealers and jobbers. The business today cannot be run by remote control. It takes the active, personal involvement of business people, be they jobber or dealer. Those who succeed today are those actively and integrally involved in their business, with direct involvement in and responsibility for all important decisions. They will know what their operating costs are. They will know how much money it takes to open the doors daily. They will recognize problems, and they will have the courage to take action to correct those problems.

Establishing divorcement, minimum markup, open supply, and credit surcharge laws will do nothing to solve product surpluses and soft markets. There is no way dealers, jobbers, and suppliers want to such a subsidy—that translates to higher consumer prices because in essence they have to be willing to have the government take over the management of their business. This will mean ultimately, that the government will determine their prices, their volumes, their marketing techniques, and in effect, the decision-making power of their business.

The upshot of government legislation and regulations could be a gradual or rapid shift by the major refiners away from branded marketing, and the healthy competition upon which it is based. That, in turn would result in a lowering of standards of product quality, customer service and responsiveness to complaints. It would increase the likelihood of consumers being deceived or confused at the pump; and it might worsen the public hurt resulting from crude oil shortages, because refiners would have less of an incentive to assure continuity of supply. Our dealers and jobbers continually tell us they depend on Shell and our various programs associated with the brand for a great deal of their success. The great majority want us to stay in branded marketing.

After many years of control and the inequities they created for many dealers and jobbers, a free market situation was established in our industry in 1981. If the experience of DOE regulation has demonstrated anything, it is that the freeze of market relationships can only be temporarily successful in the most dire circumstances. Before considering new restrictive legislation, Congress should give the free market a chance to work.

Thank you, Mr. Chairman. We appreciate this opportunity to express our views, and we hope that this information has contributed to improved understanding of the free marketplace at work in our industry.

[See appendix P for supplemental information.]

Mr. **Bedell**. That is tremendous that you cut that so short. I guess I have just two or three short questions.

Do you do as these other two indicated; that is, limit the amount of product you will furnish your distributors to what they have in their contract?

Mr. **Bittles**. No, we are not doing that. The only time we have had to do that is when we have had an emergency, a shutdown, a problem with the hydrocracker or a river being frozen or some situation where there was really an emergency.

Mr. **Bedell**. So you don't do that?

Mr. **Bittles**. No, that is not a practice.

Mr. **Bedell**. The staff pulled out of your statement a quote that says, as you have said repeatedly before, that an open supply law "may cause Shell and perhaps others to stop building and supplying branded service stations and ultimately withdraw from the branded gasoline marketing." Is that correct?

Mr. **Bittles**. Yes.

Mr. **Bedell**. Do you think that would be bad or good?

Mr. **Bittles**. Well, I think it would be very bad. I think it would be very bad simply because we have a real stake, as I said, in the success of our dealers and our jobbers. Obviously there is a selfish interest. They are selling our product, and the programs that we have worked on and developed and implemented over the years are programs designed to make them successful. Obviously, if they weren't buying product from us, our interest in that would diminish.

Mr. **Bedell**. Can they buy other products?

Mr. **Bittles**. Yes.

Mr. **Bedell**. Not only your product?

Mr. **Bittles**. They can buy other products.

Mr. **Bedell**. Can they sell it through your pumps?

Mr. **Bittles**. No, they cannot sell it through our pumps. They have to be de-identified. The station has to be de-identified in a way that does not confuse the consumer.

Mr. **Bedell**. How does that work for those that are buying other products?

Mr. **Bittles**. Well, there are very few, if any, now doing it. It is not a problem that we have.

Mr. **Bedell**. Do you buy other products?

Mr. **Bittles**. Do I personally?

Mr. **Bedell**. No, does Shell Oil buy other product besides what they refine?

Mr. BITTLES. We have about 60 percent of our own crude oil, and we manufacture just about everything that we use.

Mr. BEDELL. So you don't buy from other refiners?

Mr. BITTLES. No. There are times in an emergency when we have an exchange, and there are a couple of parts of the country where we have an exchange, but that product is changed and doctored to meet our specifications, as well as our additivies and so on. That is a very, very small percent of the total.

Mr. BEDELL. I particularly appreciate the brevity of your testimony here. I guess we will watch out for that here, Mr. Bittles. Thank you very much for being here and for staying this long time as well. We appreciate it.

Mr. BITTLES. Thank you. Glad to be here.

Mr. BEDELL. Our next witness is Mr. Kiddoo, vice president of marketing of Exxon.

Glad to have you here, Mr. Kiddoo.

TESTIMONY OF R. C. KIDDOO, VICE PRESIDENT OF MARKETING, EXXON CO., U.S.A.

Mr. KIDDOO. Thank you, Mr. Chairman.

I will try to also be as brief as I can, but may not quite as brief as my predecessor.

Our view of the gasoline marketplace is that it is a marketplace that is working. As a result, consumers today have more choices at lower prices than they would have had had the pervasive controls of the previous decade or ones like them continued.

For almost a decade prior to decontrol, petroleum marketers at all levels were precluded by those controls from making many of the needed changes in their operating practices. Since decontrol, however, the consumer in the marketplace, and not the Government, has been in charge. Motor gasoline demand has declined, and increasing operating costs have generally reduced earnings for petroleum marketers at all levels. The consumer is enjoying the results of a highly competitive market. At present, no one has to concern himself with the availability of gasoline when he drives his car. The retail price of gasoline is no higher now than it was in January 1981 and is about 9 cents a gallon lower than in March 1981.

Gasoline consumers enjoy a wider range of choices than they had during controls. Many service stations are open for longer hours. Gasoline marketing in conjunction with convenience stores has become a significant part of the marketplace. Many marketers, including Exxon, have accelerated the modernization and improvement of their facilities to make them more attractive to consumers.

Consumers have also been offered a variety of choices with respect to credit cards. They have the option of the lower price when they pay cash at some stations. More stations are accepting bank cards. Experimentation is underway in more sophisticated forms of plastic payment.

All of these changes and benefits are in response to the one stimulus which has been the key contributor to economic progress in this country—competition. Marketers at all levels have been trying to change the way they operate in order to maintain a viable business within an industry in which demand is steadily shrinking.

All of us in petroleum marketing have had to take a hard look at every aspect of our operation during this period of tough competition. At Exxon, since 1974, we have reduced the expense of operating our gasoline marketing business by 36 percent in real terms.

A major portion of this improved efficiency was accomplished by upgrading the capacity and effectiveness of our facilities while reducing the number of inefficient facilities. Markets that can be more efficiently served by distributors have been converted from direct to distributors served. We have also taken some modest steps toward restructuring our business in geographical areas to improve our efficiency. Withdrawal of our marketing operations from several States where we are at a competitive disadvantage and curtailment of inefficient refinery production are examples.

Recently we implemented our discount for cash program on a marketwide basis to permit Exxon dealers to compete for the cash buyer. The thrust of our program is to encourage Exxon branded dealers to become more competitive by offering a discount to customers who pay cash.

The results of this program are most encouraging, with about 80 percent of our direct served stations participating. Surveys have shown an overwhelming percentage of consumers had favorable comments, and we have received written complaints about the program from only about 1 of every 4,000 credit card customers.

All these actions have combined to make Exxon a more efficient marketer. The principal beneficiary has been the consumer. Any industry that operates in the free market, and particularly one faced with declining demand, will have its share of companies that suffer earnings declines, or even fail. In this environment perhaps it is natural for some people to seek a cure through increased governmental intervention.

I would like to just very quickly cover with you a few of the allegations that have been made in previous testimony. Let's begin with the complaints of some independent or so-called private brand marketers who allege that major brand refiner marketers are too competitive and sell products to their dealers and/or branded distributors at unjustifiably low prices.

They contend that major oil companies such as Exxon cannot price competitively with them unless they subsidize their downstream operations with profits from crude oil production. This subsidization theory simply does not hold water. In recent years my company has consistently invested more money in exploration and production than it earned from the production of crude oil.

Even so, our refining and marketing business segment has been a substantial purchaser of crude oil supplies at prices set by the market, and our public reporting regularly shows earnings from our separate business segments. Transfers of crude oil from the producing segment to our refineries are monitored or audited by State and Federal tax authorities, as well as, importantly, by royalty owners.

Today one charge is: Alaskan crude is providing excess profits through preferential treatment which is used to subsidize refining and marketing. Speaking for Exxon, this is simply not the case.

All of Exxon's Alaskan crude is subject to the windfall profits tax at the 70 percent rate, just like other domestic oil production from pre-1979 discoveries. Only 5 percent of the industry's production is exempted from windfall profits tax.

Because the production of this exempt oil began only recently, we believe that no windfall profits tax would be due from its producer at current crude oil prices even if the production were not exempted. Thus, the exemption can hardly be considered a competitive advantage.

However, the exemption is important in encouraging future exploration and production in the narrowly defined area which covers only new developments north of the Arctic Circle or remote from the path of the Alaskan pipeline.

Now, through their associations, some major brand distributors have alleged that suppliers are favoring dealers over distributors, primarily in the pricing structure.

In the case of Exxon, the difference between distributor and dealer price is now generally less than it was during the frozen period. However, since distributor and dealer prices vary as a result of somewhat different competitive pressures, there is no fixed relationship between the two.

Currently; Exxon distributor prices are very competitive with other distributors' buying prices and unbranded gasoline wholesale prices. Current Exxon dealer prices are very competitive with those of other major brand competitors.

The number of Exxon distributors has increased from 667 at the end of 1972 to over 900 today. The distributors' share of Exxon's motor gasoline volume has grown from 10 percent in 1972 to about 34 percent today.

It is important to note, I think, that in 1982 only 3 of the 900 Exxon distributorships have suffered bankruptcy, only 8 have merged into other distributorships, and only 17 others have discontinued trading for various other reasons, a grand total of 28 out of 900.

In total, Exxon branded distributors will sell about 7 percent more gasoline in 1982 than they did in 1981, while the total market demand has declined.

Finally, other marketers who have called for Government intervention are major brand dealers and their associations. They allege that their suppliers are driving them out of business in order to operate their service stations directly. Major oil companies are allegedly making the dealer's business unprofitable through unreasonable rents, credit card merchant fees, and company-operated stations.

Here again the facts do not fit the charges, nor are the alleged results visible. Exxon dealer rents have increased on an average of 10 percent per year since 1976, and even with the modest increases that have taken place, we are now achieving a rental return of only about 9 percent before income tax on the value of our real estate investment.

Regarding credit card merchant fees, it is not our intent that the service station dealer absorb the cost of the credit card, and evidence from our discount for cash program is that he is not doing so.

Exxon's company-operated stations have declined markedly over the last decade, from over 3,000 in 1970 to about 600 today, which represents some 3 percent of our branded Exxon outlets.

The thesis that is propounded for prohibition of major company-operated stations is that these companies intend to or do sell gasoline at these 3 percent of their stations at predatorily low prices in order to put the other 97 percent of their stations operated by dealers and distributors out of business, so that they can take over the operations of the best of them and discard the poorest.

Now, if this isn't paranoia, it certainly is economic nonsense. These proponents are probably more likely trying to put the only saleable face on this anticompetitive initiate, trying to make it palatable to the consuming public.

What they more likely want is a broader prohibition on the variety of competitors, including chain operators, distributor-operated stations, and smaller refiner marketers, who as a group represent a vastly larger competitive force than do major refiner-operated stations.

For example, the members of the Texas Oil Marketers Association, who testified here today, had many more employee-operated service stations in the State of Texas than Exxon has in the whole of the United States.

I believe a few statistics on our Exxon dealer population might be of interest.

In 1982 our dealers who lease and operate Exxon stations are selling about 5 percent more volume per station than they did in 1981 at a gross retail margin of 1.3 cents per gallon higher than it was in 1981. That is at a level of about 12.9 cents a gallon versus 11.6, which was their average 1 year ago.

Dealer attrition at these stations—that is, the dealers leaving and being replaced by new dealers—in 1982 is at a significantly lower rate than it was in 1981 and about half the rate that it was in the period 1974–80. I personally would not characterize this as a portrait of an endangered species.

It should be obvious that major brand refiners and marketers in general, and Exxon in particular, cannot simultaneously be taking unfair advantage of all other market participants. Yet, if you total up much of the testimony you have heard in the last 2 days, that is what is being charged.

The gasoline market in this country since January 1981 is a textbook example of a free market that is working to the clear advantage of consumers. It is difficult for every one of us participating in it, and no one should deny that, but it should be made equally clear that any legislation enacted to protect one segment of the market from competition by other segments of the market will be at the expense of the consumer.

Thank you very much.

[Mr. Kiddoo's prepared statement follows:]

PREPARED STATEMENT OF R. C. KIDDOO, VICE PRESIDENT OF MARKETING, EXXON CO., U.S.A.

Mr. Chairman, members of the subcommittee, my name is Dick Kiddoo, marketing vice president of Exxon Company, U.S.A. I have responsibility for Exxon's marketing operations throughout the United States.

Our view is that the gasoline marketplace is working and that marketing has never been more competitive. As a result, consumers have more choices at lower prices than they would have had if the decade of pervasive controls had been permitted to continue.

In that light, I would like to review with the subcommittee Exxon's view of these changes in the gasoline marketing environment since decontrol in January of 1981, and how Exxon Company, U.S.A. has reacted to them. I will also cover our views of the impact these changes have had and will continue to have on petroleum marketers at all levels. This, I believe, will help the committee to understand why some marketers are expressing concern about the current environment. I would also like to comment on certain allegations of alleged "unfair" practices that have been raised by some marketers and put forward Exxon's position on each one.

MARKETING ENVIRONMENT

For almost a decade prior to decontrol, petroleum marketers, at all levels, were precluded from making needed changes in operating practices by government controls. During most of that period, petroleum marketers were told by government to whom we could sell, what portion we could supply to each customer, and what prices we could charge. Since petroleum supplies and prices were controlled, jobber, dealer, and refiner margins were largely a function of government regulation, not marketplace competition.

During the latter part of this period of controls, demand for motor gasoline started to decline by about 3.5 percent per year from its peak in 1978 until the end of controls in January 1981. This was due to conservation efforts by consumers and to more efficient automobiles. However, under controls, marketers were not completely free to respond to this decline by adjusting their operating practices.

Since decontrol however, the consumer, and not the government, has been in charge. The declining demand for motor gasoline which began in the late '70s has continued at around 2.5 percent per year through 1982, this time fueled as much by general economic recession as by any other factor. Thanks to a relatively stable political situation in petroleum producing countries, petroleum supplies have been more than adequate to meet this falling demand. Lower demand and increased operating costs have generally reduced earnings for petroleum marketers at all levels. The consumer is enjoying the results of this highly competitive market.

At present, no one has to concern himself about the availability of gasoline when driving his car. Prices of petroleum products have come down. Retail prices of Exxon's gasoline, when adjusted for average inflation, have declined about 12¢/gallon since decontrol.

Today, gasoline consumers also have a wider range of choices, particularly in gasoline purchasing, than they had during controls. At many service stations, they now have an option of choosing either the convenience of using the credit card or the savings from paying cash. Since many brands now accept all oil company cards, consumers can enjoy the convenience of purchasing on credit at a much larger number of stations than ever before.

Other forms of nonprice competition have also resurfaced from the precontrol days. Gasoline marketing through convenience stores has become a significant part of the marketplace. Many marketers have accelerated modernizing and improving their facilities to make them more attractive to consumers. In Exxon's case, we have spent about $83 million on service station modernization in 1981 and 1982 and will spend an additional $40 million next year.

All of these changes and benefits, lower prices, cash discounts, more choices, greater convenience, and improved facilities, are in response to the one stimulus which has been the key to economic progress in this country—competition. Just as government regulation controlled volumes, prices, and margins in the '70s, the real control is in the hands of the consumer today.

The result has been an extremely competitive environment where marketers at all levels are trying to change the way they do business in order to remain viable within an industry that is steadily shrinking. As a result of this competition, pressure on operating margins at all levels—refiner, jobber, and dealer—are heavier than during controls. All of us in petroleum marketing have had to take a hard look at every aspect of our operations during this period of tough competition. Many have invested in improved retailing and distribution facilities while reducing their total number of service stations, terminals, or bulk plants. Other marketers withdrew from unprofitable areas while consolidating their operations into the areas of the strength. Everyone has paid more attention to controlling their operating costs.

Had these and other steps not been taken within the industry to improve operations and control costs, the consumer would certainly be paying more for gasoline today.

At Exxon since 1974, we have reduced the expense of operating our gasoline marketing business by 36 percent in real terms. A major portion of this improved efficiency was accomplished by upgrading the capacity and effectiveness of our facilities, while not replacing many of our dealers who voluntarily left inefficient service stations.

In some markets, we have also changed our method of operation from supplying the area directly from our facilities, to supplying it through a jobber. These changes were made because we realize that, in some areas we simply cannot operate as efficiently as can a jobber. At present, about 34 percent of our gasoline sales are made through branded distributors, compared to only 10 percent in 1972.

We have also taken some modest steps toward a geographic restructuring of our business. We announced the withdrawal of our marketing operations from several states where we are at a competitive disadvantage. We have also scaled back refinery runs at our Bayway, New Jersey, refinery to minimize our production through older, less efficient equipment.

More recently, we have implemented our Discount for Cash program on a nationwide basis to allow our dealers and distributors to be more competitive for this cash customer. Under this program, we simultaneously instituted a 3 percent processing fee on credit card tickets submitted by dealers and jobbers and cut our dealer and jobber buying price by an amount to offset, on average, the 3 percent fee. The thrust of our program is to encourage Exxon branded retailers to become competitive by offering a discount to customers who pay cash.

The results of this program are most encouraging, with about 80 percent of our direct-served and about one-half of our jobber-served stations participating. The cash discount most typically offered is 4¢/gallon, and consumer reaction to the program has been very good. Test market surveys have shown 90 percent of consumers sampled had favorable comments.

All these actions combined have made Exxon a more efficient marketer, and the ultimate beneficiary has been the consumer. This consumer benefit is the critical issue and thus is the point that should be the primary concern of the Congress.

MARKETING ISSUES

Any industry operating in a free market and particularly one faced with declining demand will have its share of companies that fail. Many of the companies that remain will also suffer from reduced earnings as they compete for a share of the market. Petroleum marketing is no exception. In this environment, it should not be too surprising that some marketers are looking for a return to "the good old days" when margins all through the system were wider. The fact that these "good old days" included government regulations and controls prompts some to equate a less traumatic business environment with those regulations, and thus to urge reinstitution of those regulations which helped that market segment.

I submit that the refiner/marketer is not the cause of the problem, and legislation restricting refiner/marketer operating practices will not result in the cure that is sought. In this regard, I would like to review with you some of the allegations being made by a few marketers and some of their proposed remedies.

SUBSIDIZATION WITH UPSTREAM PROFITS

Let's start with the charge of subsidization of downstream operations with upstream profits. Some independent marketers allege that major brand refiner/marketers are too competitive and price products to their branded dealers and jobbers too low. The believe that majors, such as Exxon, are not efficient enough to price competitively with them unless they subsidize their downstream refining and marketing operations with profits from upstream production.

We certainly recognize that the independent marketer is efficient. This efficiency over the past decade has enabled the independent marketer share of the gasoline market to rise from 28 percent in 1972 to 35 percent in 1981. But some time ago, we also recognized that we had to become more efficient ourselves in order to retain the viability of both Exxon's and our dealers' business. The efficiency improvement I just outlined, not alleged subsidization, are the reasons why Exxon is more competitive today.

The subsidization alleged simply does not hold water. In recent years, my company has consistently ploughed back, with exploration and production investments, more money than it earned from the production of crude oil. Even so, our refining and marketing business segment has been a substantial purchaser or crude oil supplies at prices set by the market. Our public reporting regularly shows earnings for our separate business segments, and transfers of crude oil from the producing segment to our refiners are audited for state and federal tax purposes.

Today, the charge is that Alaskan crude is providing excess profits through preferential tax and tariff treatment that are used to subsidize the downstream. The suggested remedy is repeal of the WPT exemption for some Alaskan crude oil. Speaking for Exxon, this is simply not the case. First, the small but justifiable adjustment in the TAPS pipeline rates used to calculate the WPT was recently repealed. Second, most Alaskan crude—all of Exxon's—*is* subject to the Windfall Profits Tax at the 70 percent rate just like other domestic oil from pre-1979 discoveries. Only about 5 percent of industry's Alaskan production, currently, I believe, less than 100,000 barrels per day, is exempt from the WPT. Because the production of this exempt oil was begun only recently and crude prices are currently depressed, we believe no WPT would be due from its producer even if the production were not exempted. Longer term, this exemption is vital to the continuing exploration in clearly-defined exemption area, which covers an extremely hostile environment north at the Arctic Circle and remote from the Alaskan pipeline. In other words, repeal of this limited exemption would do nothing to current operation, but would send clear and damaging signals to those preparing to explore some of the likeliest, but most hostile geography on earth.

What some perceive as subsidization at a specific point in time, may, in fact, be the exercise of an earned competitive market advantage by a particular supplier. The free enterprise system, through profit incentives, creates a natural stimulus for competitors to optimize the operations that can give them a competitive edge. Some suppliers have, over the years, developed an advantageous crude mix. Still other suppliers have invested heavily to hi-grade refineries so they can economically process lower cost crudes. Some companies have focused on improving the efficiency of their marketing operations through strict cost control, pruning of inefficient operations or markets, and improvements in facilities. Many companies have combined several of these and other steps to help them compete.

Another suggested remedy for alleged subsidization is divestiture. Some trade associations are suggesting that divestiture by major oil companies of certain segments of their businesses would solve their concerns. It is not clear as to what would be divested (e.g., service stations, marketing, marketing and refining, etc.) or how the divestiture would take place. But, if a form of divestiture were to be applied and resulted in chaotic market conditions and new and perhaps unforeseen problems, there would be no way to return to the previous conditions. It would be impossible to return asset ownership to former owners and equally impossible to return all the affected employees and consumers to their former situations.

JOBBER/DEALER PRICE DIFFERENTIAL

Some major brand distributors have also leveled charges at their suppliers. Through their associations, jobber groups claim that majors have unfairly reduced the so-called "jobber differential" by raising the branded Distributor Buying Price (DBP) on motor gasoline in relation to the Dealer Transport Truck Price (DTT). In the competitive climate prior to price controls, Exxon established DTT motor gasoline prices by geographical areas. These prices were based on competitive market forces, including other suppliers' prices in the same trading area tempered, obviously by the cost of supplying product to that area. Exxon individually negotiated DBP motor gasoline prices based on competitive conditions in various distributor market areas and not on a fixed differential versus DTT. During price controls, the difference between DBP and DTT was essentially frozen by DOE. Now that we are again operating in a market free of controls, Exxon's DBP and DTT motor gasoline prices are determined by the respective marketplaces.

Exxon is not involved in predatory pricing or an pricing practice aimed at harming distributors.

There is no fixed relationship between the DTT and the DBP, though they are related in terms of similar, but not identical, competitive factors influencing the two classes of trade. Exxon does not guarantee a specific differential between the two prices but sets its DBP and DTT prices in response to competitive conditions. Except during price control periods, the price difference has varied with competitive pressures at different levels in the distribution chain. In addition, the difference has changed as Exxon has altered its approach to charging for the services included in the price, such as credit cards.

Distributor buying prices are primarily influenced by rack prices. If the price to a major brand distributor is too high relative to the rack price, he cannot compete. If it is too low, he is in a position to assume the rack function and profitably broker product as long as his supplier makes it available.

Despite the narrowing of the differential, there has been no rash of business failures among Exxon jobbers. On the contrary, only four Exxon jobbers have become insolvent since 1979.

COMPANY-OPERATED SERVICE STATIONS

The relatively few stations operated by some majors, including Exxon, appear to be the next most common area of allegation. Both jobber and dealer groups claim that retail prices at major brand company-operated service stations are so low that they cannot compete and still maintain a satisfactory margin. One remedy they seek is retail divorcement.

In establishing motor fuel prices at a company-operated service station, it is Exxon's practice to post retail prices which allow us to compete effectively with key competitors in the trade area.

Exxon sets retail prices at company-operated service stations in response to competitive conditions prevailing at retail in the trading area. Jobbers and dealers who elect to compete for businesss in a market where prices are depressed must expect a reduced margin along with other competitors.

Exxon believes Retail Divorcement would be a very severe and illogical solution to correct the allegations of unfair practices, most of which are unrelated to direct refiner operations. Major oil company salaried service stations represent a small portion (3 percent) of the total U.S. service station chain (5 percent of volume in '81). It is very difficult to understand how this small segment of the market can be a threat to jobber or dealer-operated stations.

SERVICE STATION RENT

Dealer associations also claim that the mayors are trying to drive them out of business and operate their stations directly. Majors are allegedly making the dealers' business unprofitable through unreasonable and ever increasing rents.

Here again, the facts do not fit the charges, nor are the alleged results visable. Exxon's dealer rents have, on average, increased about 8 percent per year since 1977. We do not believe this increase is unfair in light of several factors. First, prior to controls, dealer rents were very low. During most of the period of controls, only minor increases in rents were allowed. However, during this period, property values increased dramatically. Thus, as we started to come out of controls, our return on our real estate investment was unrealistically low. Even with the increases that have taken place, we are now achieving 9.2 percent return before income taxes on the value of our real estate investment. Our rentals do not vary with gallonage throughput; this was a source of contention with dealers in the past.

To allege that we are trying to drive dealers out of business in favor of company-operated stations is economic nonsense. Company stations have declined markedly from 13 percent of our branded chain in 1970 to only 3 percent today. Dealer attrition—that is dealers leaving and being replaced by new dealers—in 1982 is at 70 percent of the 1981 rate and only one-half of the average rate of dealer attrition for the period 1974 through 1980. Less than one-third of those dealers leaving stations in 1982 have done so because of competitive or economic reasons.

CREDIT CARD MERCHANT'S FEES

The next in marketing practices that is objectionable to some marketers is the trend toward credit card processing fees. Dealers and jobber claim that oil companies have instituted credit card ticket processing fees in order to shift the cost of credit from the oil company to the retailer. The remedy proposed is legislation to prohibit oil companies from charging these fees.

Some background as to how Exxon has attempted to recover the costs of its credit card programs in the past may aid in understanding this issue. Historically, these costs have been recovered in the wholesale price of gasoline, and service station dealers and distributors passed the cost of credit cards along to their customers. Under this system, dealers and distributors made the same gross profit on credit and cash sales. Thus, the credit and cash customer shared the cost of the retail credit system, or said another way, the cash customer subsidized the credit customer.

The cost of Exxon's credit card program in 1972 was about 2¢/gallon. Because of rising gasoline prices and dramatically higher interest rates, the net cost is now 4 to

6¢/credit gallon. Finance charges on late payments and extended credit terms are paid by only a small percentage of Exxon credit card customers.

The cost of credit is simply too high to be passed along in the wholesale price of gasoline and still allow our dealers and distributors to be competitive in the marketplace for the cash customers who buy some 70 percent of the gasoline sold in this country.

Exxon is now encouraging dealers and distributors to offer discounts for cash. This is accomplished by initiating a merchant's fee charged to the dealer or distributor for credit card tickets submitted for reimbursement. At the same time, wholesale buying prices for gasoline are reduced by an amount sufficient, on average, to offset the merchant's fee.

Since the dealer segment has a higher percentage of credit card sales than the distributor segment, their buying price reduction had to be greater than that of distributors in order to offset the merchant's fee. In both cases, however, the reduction was sufficient to offset the merchant's fee expected to be charged to that class of customer.

Retailers can pass along the price reduction to their cash customers in a lower discounted price while the price paid by the credit card customer includes the cost of credit.

By offering the lower cash price, dealers, including those served by branded distributors, can compete more effectively in the marketplace for cash customers while continuing to offer credit customers the convenience they seek for a price that is commensurate with the credit service they receive.

It should be noted that some distributors, as well as some dealers, would prefer to add a credit surcharge to their base cash prices rather than offering a discount for cash off their credit prices. However, the Truth in Lending Law specifically prohibits sellers from imposing a credit surcharge.

We believe that credit card merchant's fees are equitable to dealers and distributors as well as to cash and credit customers. The cost of the credit card has been shifted from all customers to only those customers who want to avail themselves of the convenience of credit service. Legislation to prevent credit card merchant's fees would require the implementation of a less desirable means of competition for the cash customer and could result in the elimination of the credit card. Consumers and marketers at all levels of distribution would be hurt by such legislation.

It is clear that different companies have chosen different approaches to the problem of credit card costs. We don't yet know how the market will evolve in this area, but it should be the consumer, not the Congress, not the dealers, and not the suppliers, who makes the final decision.

While these four complaints—shrinking jobber/dealer differentials, company-operated service stations, subsidization, and credit card merchant's fees—are the most talked about areas, there are also a number of other issues raised by jobber groups that I would like to bring to the subcommittee's attention.

VOLUME LIMITATIONS

Jobber groups also claim that majors have unfairly restricted motor gasoline supplies to jobbers while providing unlimited supplies to dealers served directly.

Since decontrol, Exxon has continued to supply its customers' fuel requirements in a fair and equitable manner. Exxon has executed sales contracts with its fuels customers that either specify volumes or a method of determining volume based on historical performance. In the event that it should become necessary to allocate motor gasoline supplies, these sales contracts should provide the basis for any company allocation program.

During the second quarter of 1982, gasoline supplies were temporarily short in some markets, and some Exxon distributors requested volumes in excess of contract maximums. These requests could not be honored in all cases. Claims were made that Exxon was allocating gasoline to its distributors but not to its dealers. This charge apparently stemmed from a combination of unusual events. During the period April through June of 1982, Exxon's distributor buying price was at times below the average rack price by more than 1¢/gallon because of a temporary tight supply situation in the spot market. Not surprisingly, many Exxon distributors took advantage of the situation and drew abnormally high volumes of gasoline, some of which may have been brokered. As a result, Exxon's sales to distributors increased 26 percent versus the same April-June period in 1981, while sales to dealers decreased by 3 percent compared to the same time period.

In response to this situation, Exxon decided to limit gasoline supplies in June to its distributors to 100 percent of contract. This restriction was not applied to dealers because dealer sales volume was below the previous year's levels. The tight supply condition was fortunately short lived (in other words, the market worked), and eased about the time the decision was made; and as the rack price declined, so did the need to limit distributor purchases except in a very few markets. The decision to limit distributors to contract volumes was consistent with applicable provisions in their supply agreements and with good business practices.

SOLICITATION OF JOBBER ACCOUNTS

Additionally, jobber groups claim that majors are soliciting jobber dealer and commercial accounts in order to supply them direct. Once again, with Exxon, this is not the case.

Over the past ten years, the uninterrupted trend in the method of serving Exxon branded service stations shows increasing numbers of jobber-served retail outlets (from about 5,800 to almost 12,000) and decreasing numbers of direct-served retail outlets (from over 22,000 to about 8,400). As mentioned earlier, Exxon branded jobber motor gasoline sales rose from 10 percent of total Exxon volume in 1972 to over 34 percent in the first half of 1982.

Over the last few years, Exxon's number of commercial/industrial motor fuel accounts has remained approximately the same; however, the volume to these accounts has decreased dramatically. In addition, Exxon's direct sales of heating and diesel fuels to commercial/industrial accounts has also decreased.

Exxon does not actively solicit Exxon jobber service station accounts. With regard to industrial/commercial accounts, Exxon's current practice is to serve direct only those that offer sufficient volume to make such accounts economically attractive. In pursuing this practice, Exxon does not actively solicit jobber accounts, but may respond to a jobber customer's request to be served direct, or may submit a bid on business for which a jobber may also be bidding. To deny a request to bid, in order not to compete with an Exxon jobber, would be a questionable business practice, if not restraint of trade.

While the general policy is to sell product at posted prices, Exxon may choose to meet a lower competitive price. Exxon believes a decision to respond to such competition should not be forestalled because there are Exxon jobber operations in the market. Furthermore, Exxon does not attempt to limit the disposition of product sold to its jobbers. Exxon and its jobbers may, therefore, compete against one another for a given commercial/industrial account that is attractive and within the service capability of each.

MARKET WITHDRAWALS

Finally, jobbers are concerned that market withdrawals will disrupt supplies, adversely affect the jobbers of the withdrawing company, and reduce competition to the detriment of consumers. However, our view is that selected, legitimately implemented withdrawals are necessary adjustments which, in many cases, are long overdue because of controls.

The concern that withdrawals will cause supply disruptions is not supported by historical precedent. For example, following the decontrol of heating oils in 1976, some suppliers did elect to withdraw from certain uneconomic heating oil markets. However, other suppliers absorbed the business formerly served by the withdrawing suppliers. Furthermore, these markets were then able to effectively and efficiently meet the supply challenges created by subsequent severe cold winters.

Historically, motor fuel suppliers have entered new markets and withdrawn or curtailed operations in existing markets in response to normal competitive forces. These withdrawals have occurred without significant interruption of supply to consumers and with minimal disruption in supply availability to economically viable dealers or jobbers. When marketers have elected to leave a market, the more efficient suppliers that remained typically have met consumer demand requirements and filled potential supply voids. Resulting efficiencies probably have lowered total marketing cost and, therefore, kept prices to consumers in that market lower than they otherwise might have been.

Exxon believes that limitations on market withdrawals are unnecessary and an undesirable restraint on legitimate business decisions. The free market mechanism should be permitted to operate, as experience has proven that other suppliers will take over any economically viable business handled by the withdrawing marketer. The acquisition of additional business tends to strengthen those suppliers and their customers, and make their operations more efficient with potential price benefits to consumers.

SUMMARY

In summary then, just as the charges and allegations of "unfairness" made by some marketers represent the workings of a free, competitive marketplace, so the remedies proposed would hinder and not help that marketplace to function. It should be obvious that major brand refiner/marketers in general, and Exxon in particular, cannot simultaneously be taking unfair advantage of all other market participants. Yet, if you total up all the testimony you have heard and articles you have read, that is what is charged.

Accordingly, I submit that what is happening to marketers at all levels is simply the way that a competitive market system is supposed to work. It is a system which encourages tough competition—and puts heavy pressure on profit margins—to give the consumer the best possible product and service at the lowest possible price. It is a system that is tough on sellers at all levels, and Exxon is certainly not immune. Many dealers and jobbers claim their profits have fallen. So have Exxon's!

The way to higher profits—indeed, in our business, to continued survival—is greater efficiency and better products, sold in a competitive marketplace—not more regulation and legislation. The gasoline market in this country, since January 1981, is a textbook example of a free market that is working. It is difficult for all of us participating in it; no one can deny. But, it should be made equally clear that any legislation enacted to protect any segment of the market from competition will be at the expense of the consumer.

Mr. BEDELL. Thank you.

Mr. Hiler?

Mr. HILER. No questions.

Mr. BEDELL. I will make it very, very short.

Mr. Kiddoo, you feel that the way you are operating is pretty proper. Do you plan any major changes in the way you operate?

Mr. KIDDOO. We have no changes in mind. We will continue to review our business from time to time to make sure that it is as efficient and as——

Mr. BEDELL. By and large you think it is working pretty well the way it is and you probably would continue to operate this way?

Mr. KIDDOO. Yes, sir; there are obviously some areas of the country and parts of our business which we find somewhat less than satisfactory, but there is nothing at the moment that I could suggest that we would do differently.

Mr. BEDELL. Do you limit your jobbers to how much you will furnish them, as some of these others do?

Mr. KIDDOO. Well, first of all, let me point out that we negotiate each year a volume with a jobber that is reflective of what he expects his demand to be.

Mr. BEDELL. I don't know about you folks, but I should tell you that we certainly have had people come to us and say that that is not really much of a negotiation, that the jobber is cornered by whatever the supplier tells him is going to be in the contract. I am not accusing you of it, but we are told that is happening.

Mr. KIDDOO. Yes; I understand that. I am aware of many cases where we have increased jobber volume contracts as a result of changes in his business structure. There have also been cases where for a persistent period of time he has lifted less than his contract volume. We have discussed that with him and in some cases have agreed but never forced a reduction in that contract volume. With the exception of a short period in late May and June of this year, we have permitted jobbers to lift their full requirements from us.

Mr. **Bedell**. At this time they could get anything they wanted from you and you are not limiting them just to their contract amounts?

Mr. **Kiddoo**. Yes, sir, it is important, though, I think to recognize that during the period of May and June we did limit our contractors in some cases to as low as 100 percent of their contract.

Mr. **Bedell**. Did you limit your dealers at the same time?

Mr. **Kiddoo**. We did not, but let me point out to you that during that period of time, because there was a fairly tight market and our prices were particularly competitive for distributors, our distributor sales were running at some 26 percent above the previous year, whereas our dealers at that time, our dealer liftings were running at something slightly under the period a year ago.

When we make a contract with a distributor, we commit not just to him for the month of June or July, but we commit to him for a continued supply arrangement. We cannot let as extreme a shift of 25 or 30 percent overlifts without having to redress and have a look at what our volume capabilities are.

We never got below 100 percent, and in most cases we limited jobbers in some areas where we could to about 120 percent of contract.

Mr. **Bedell**. Do you have any questions?

Mr. **Hiler**. No, Mr. Chairman.

Mr. **Bedell**. We appreciate your testimony. Thank you very much.

Mr. **Kiddoo**. Thank you.

Mr. **Bedell**. Our next witness is Mr. Paul Collier, executive vice president of Amoco Oil Co.

TESTIMONY OF PAUL D. COLLIER, EXECUTIVE VICE PRESIDENT, AMOCO OIL CO.

Mr. **Collier**. We all seek brevity at this hour. My written testimony will be submitted to the committee.

At Amoco we feel that much of the apparent unrest and frustration being experienced by marketers and refiners both in today's marketplace are the result of changes that have occurred since decontrol of product prices and supply allocation.

Under price and allocation controls, our industry was thwarted in our attempts to respond to the dynamics of the marketplace. Demographic changes occurred, consumer purchase behavior changed, and demand patterns were altered, new competitors and marketing strategies emerged and some established competitors disappeared. When controls were ended the pressure for change built up over the 10 years of controls was suddenly released and all of the things that we at Amoco wanted to do for years were announced and put into place just as rapidly as possible.

Our marketing and distribution systems handled these changes remarkably well considering the fact that they have been held in limbo during the period of controls.

What other changes have we experienced and witnessed? First, there has been a worldwide economic slowdown that coupled with price-induced conservation and substitute fuel, with a more efficient motor vehicle population. All three have reduced consumption of petroleum products dramatically in this country, from approximately 19 to 20 million barrels a day at peak in 1978 to currently between 14 and 15 million barrels a day in 1982.

The size of our markets has shrunk, and each refiner, each marketer, jobber, and dealer is now competing fiercely to maintain his share of what he considers his business. This competition has spawned a plethora of programs aimed at improving one's sales and the economics of doing business. Marginal operations, be they major oil companies, independent refiners, marketers, dealers or jobbers, will find it extremely difficult to operate profitably in this environment.

We have a surplus and excess capacity at almost every level of the petroleum business, including between 3 million to 4 million barrels a day in excess refining capacity. At Amoco, we have taken several steps and have implemented many programs to keep our company, our jobbers and our dealers competitive and efficient.

We have closed three of our refineries, which had some 230,000 barrels a day running capacity. We have withdrawn from marketing in 11 States. We have closed two of our regional offices, and eight of our district sales offices. We have implemented on a nationwide basis discount for cash.

We have pursued the development of the cash rental program that we implemented in 1975. We have established both pumper and convenience store concepts within our network of service stations. We have implemented terminal-based jobber pricing.

Our marketing programs we feel have not only helped keep our dealers and jobbers competitive and profitable but have positively responded to the consumer's demonstrated wants, their needs, and have provided him with multiple choices of full service, self service, cash transactions, credit transactions, branded products or unbranded products, three or four different grades of gasoline, all with a myriad of service, of hours, of prices that are being offered to the consuming public.

It is unfortunate that with the declining demand and surplus capacity the resultant pressure on margins due to intense competition is going to result in an inevitable shakeup. Consolidations and failures will occur, and that includes refiners, as well as jobbers and dealers.

These events are not exclusive to our industry. They are currently observed in both the farm implement and the auto dealership industries and for basically the same reasons: reduced sales and overcapacity to produce.

We believe our industry, our company, our dealers and our jobbers will emerge from this period of intense competition much stronger than they were before and our customers will be the beneficiary of this intense competition.

Many of the changes I have described to you here today have not been easy, nor have they been pleasant, but we believe the customer and the marketplace are better off because of the changes that we have implemented.

Amoco, like several of the other major spokesmen here today, has a vested interest in the success of our dealers and of our jobbers, since our sales and distribution basically are through both dealers and jobbers.

We have about 100 salary-operated service stations in a total population of over 6,200 direct-service service stations. We have approximately 2,300 jobbers who supply an additional approximately 14,000 dealers.

My last point, therefore, is that Amoco believes in branded marketing through a network of lessee dealers and of branded jobbers. An objective and factual review of Amoco's policies, our programs, positions and relationships with our customers over these many years will place Amoco in a responsible position within the industry, a position that we are rightfully and deservedly proud of, and a position we jealously intend to protect and to maintain.

We also strongly feel that efforts to restrict our operational options and impose other limits upon the legitimate commercial or business decisions that we are faced with are intrusions to the efficiency of the free enterprise system and should be considered its anathema.

If you have any questions, I will be very happy to respond.

[Mr. Collier's prepared statement follows:]

PREPARED STATEMENT OF PAUL D. COLLIER, EXECUTIVE VICE PRESIDENT, AMOCO OIL CO.

Mr. Chairman, I am Paul Collier, Executive Vice President of Amoco Oil Company.

I would like to briefly describe what Amoco sees as the present condition of petroleum marketing and discuss the steps we have taken in attempting to serve our customers and operate profitably in a highly competitive market.

We can begin with the fact that the oil industry is facing a declining demand. This represents a real challenge because the industry long-term historical pattern has been one of demand growth in good years and bad. Moreover, the impact of today's demand decline is without a doubt worst than it would have been had the industry not been under controls for the greater part of the last ten years.

Those allocation and price controls kept many consumers and many segments of the oil business from feeling the full impact of years of escalating costs. They discouraged conservation and they prevented the industry from making gradual changes to adjust to the shifting demand patterns.

The allocation and price controls actually stifled the efforts of the efficient, agressive marketers while shielding the inefficient from failure. This was caused by allocating supplies based on history rather than changing demand patterns and protective historical margins for suppliers, dealers and jobbers.

There are other factors compounding today's industry problems. The recession is unquestionably the largest, but there also have been laws mandating smaller and more efficient cars. There have been tax or regulatory policies that have shrink the home heating oil market, most notably price controls on natural gas, which increased demand for gas at the expense of fuel oil. Also a shift from residual fuel to coal. And there is a growing consumer energy awareness that has forced many changes in the ways customers want to be served. All this reduces demand for our chief products.

In hard terms, gasoline demand and fuel oil have dropped 13.9 percent and 20.1 percent, respectively, since 1978.

According to the American Petroleum Institute, 54 refineries have closed completely and another 22 have partially shut down. Although we believe this number actually understates the total shutdown refining capacity, we expect that still more excess and marginal capacity will close down in the future as the industry adjusts to lower demands for its products.

When we consider the impact of the declining market in total product volumes and total refinery closings, it's not surprising that individual marketers see that decline reflected in their own operations.

That's not to say that all marketers have been evenly hit. Major branded companies have been hurt as customers have become more price conscious. Independents, on the other hand, have increased their total market share from 22.8 percent in 1975 to 32.5 percent today.

In spite of such trends, Amoco believes there is a role for branded marketing. Accordingly, we have made the consolidation required by a smaller market. We have closed three of our ten U.S. refineries. We have shrunk our marketing regions from five to three and our district offices from 26 to 18. We have withdrawn marketing operations from 11 States. We took a look at our different lines of business and decided to sell off the fertilizer lines which weren't performing satisfactorily and didn't show any signs of being able to change.

One thing I want to stress is that with all this reevaluating, we have consistently stayed with the concept of our basic dealer and jobber marketing in wholesale and resale channels. This means that Amoco is committed to the network of independent business people who distribute our products in our 33-state marketing area.

It's important for you to note that Amoco changed its method of serving rural areas and small towns from an employee commission agent organization to an independent jobber organization in the midwest seven years ago.

We believe the major reason that we have had such success in marketing this way is because we are a pro-dealer and pro-jobber company. The highest levels of Amoco management are accessible to our dealers through their freely elected Dealer Advisory Council.

In addition to ongoing contracts, the Council meets annually at our headquarters for face-to-face sessions with Amoco management. We have similar programs for keeping in touch with jobber concerns.

These are not token programs. They are a real channel of two-way communication in the company. And, we're very proud of it.

We will remain dealer/jobber oriented as long as it is profitable to do so. To do otherwise would breach our obligation to our stockholders.

Unfortunately, some of the steps we have taken to remain dedicated to selling through independent dealers and jobbers are being used by some dealer and/or jobber organizations to allege the opposite.

As an example, our rent program for dealers is based on recovering a cash rent based on the value of the facility rather than on a cent-per-gallon basis. We believe our real estate should provide a fair (modest) return on our investment just as any other commercial real estate. We currently are about to enter the final year of an eight-year phase-in facility value rent program.

In the jobber channel we eliminated the archaic hauling allowance and now price gasoline and distillates F.O.B. at the terminal versus a delivered price to put ourselves in step with the rest of the industry. We maintain contractual arrangements with our jobbers to assure them security of supply, but we expect them to live up to the terms of the contract.

We have tightened up our credit terms with our credit card customers to help offset the cost of credit. (Revolving charge—20 percent minimum vs. 10 percent—20 days instead of 30). Our credit policy for jobbers is among the more liberal in the industry. We ask for payment on the 15th day but still grant a 1 percent discount if paid by the 10th day.

These represent a few of the changes we've made in an effort to remain profitable in the reseller and jobber (wholesale) methods of doing business.

For some years now, we have kept track of the preferences of consumers through marketing research. We have observed that the fastest growing segment of customers is oriented more to convenience, to fast fill-ups, to low prices and away from the amenities traditionally offered by major companies at full-service stations.

Although we intend to retain all the amenities that our branded customers want, we also are going after the business of the non-traditional Amoco customer. To do so, we are changing the ratio of our service station mix to include more self-serve and pumper stations. For customers who prefer them, we also are retaining a majority of the conventional stations and upgrading car care and mechanic certification programs.

Along the same lines, we are now offering a dual cash/credit price to customers—our Discount For Cash Program. Again, the idea was to attract the cash customer while still offering credit to those customers who want it.

That was a big decision for us. We have one of the largest and most loyal bases of traditional credit card customers in the industry. The card is familiar to and accepted by those customers and our dealers and jobbers. In marketing, you just don't change a familiar and successful factor without full consideration.

But we have taken this approach: The customer tells us what he or she wants and what they don't. They vote with their dollars everytime they drive across a service station driveway and they get their way. For example, some time back (10 years), many segments of the industry resisted the concept of self-serve gasoline sales. But today, 65 percent of all gasoline sold through self-serve pumps . . . and many of the newest gasoline stations are designed to appeal exclusively to the self-serve customer.

Similarly, our Discount for Cash Program is aimed at the fast growing segment of customers who want lower prices and pay cash. It's our way of signaling those customers that we want their business . . . and we are willing to make the changes it takes to get it. Even in a shrinking market, we believe there is a place—and a profitable place—for any company willing to look at consumer trends and then adjust its operations to compete for that business.

The other side of that coin is this: Some segments of the industry refuse to face the facts of declining demand. These segments apparently think that it's okay for others to close down facilities, or withdraw from markets that can't be profitably served, or consolidate internally, but that they should expect to continue operations just like the old days when demand grew every year.

We have consistently and continually counseled our jobbers and dealers that "future survival will depend on making your operations as efficient as it can be. You will have to make the hard decisions inside your operations that we have been making inside ours. But most importantly, you will have to signal the customer that you have the combination of prices, goods and services that he wants."

Thankfully, many of our jobbers and dealers didn't wait for us to see the light. Many of them began doing these same things some years ago. Those business people are in the marketplace today because they made tough decisions a long time ago. And, they will be in the marketplace tomorrow because they are continuing to make such decisions now.

What I have been describing is a marketplace that is one of the most competitive marketing environments that can be found in American business today. As I mentioned at the outset, many of the changes going on have been more dramatic and sudden than they would have if we had not been under rigid controls for a long time. But the industry is going where it would have been going in any case—and that is just where the customer wants it to go.

I believe it's necessary to step back a moment and realize that most of the unrest evidenced by dealers and jobbers alike is brought on by fierce competition on the street for a share of a decreasing market. While the different segments of our industry vent frustration with one another, the consumer, the ultimate customer, the one who pays, is benefiting substantially every time he/she goes to the pumps. The average gasoline prices today are approximately 5¢ per gallon lower than they were in January 1981, the last month of controls (per Lundberg Survey).

Painful adjustments have been made and more will be required in the future. Certainly the kind of changes I have described have not always been easy nor pleasant. But we believe that the customer and the marketplace is better off because of those changes . . . and the many similar changes taking place throughout the industry.

Thank you for this opportunity to provide this perspective to the changes in our industry.

Mr. BEDELL. Thank you, Mr. Collier.

Mr. Hiler?

Mr. HILER. I think Amoco may be the only major whose name was not mentioned in the last 2 days of hearings, so given that, I don't know if that is good or bad, but given that, I don't have any questions to ask.

Mr. BEDELL. Thank you.

Mr. COLLIER. We may have dodged a bullet.

Mr. BEDELL. Mr. Collier, do you plan any major changes in the way you operate with your dealers or jobbers in the next year or so?

Mr. COLLIER. No, we do not.

Mr. BEDELL. Do you have limits as to how much you supply your jobbers, as some of these other companies?

Mr. COLLIER. No; our jobber contracts are negotiated annually. I submit that the most equitable manner or fashion in negotiating volumes are the demonstrated performance of our customers, that is their historical liftings, their agreement to purchase. That is how we establish the volume on those.

Mr. BEDELL. That is not my question. If they want to buy——

Mr. **Collier**. They can get all they want.

Mr. **Bedell**. That answers my question.

I have no further questions. We appreciate very much your testimony.

Mr. **Collier**. Thank you.

Mr. **Bedell**. I think at this time we should thank the people in the audience for their patience. I don't know how hungry you are, but I am pretty hungry. It is great of you to wait so long. I appreciate it.

The record will be kept open for a week for any additional comments anyone wishes to make.

[Whereupon, at 2:12 p.m. the subcommittee adjourned, to reconvene, subject to the call of the Chair.]

APPENDIX

APPENDIX A.—BACKGROUND INFORMATION ASSEMBLED FOR THE SUBCOMMITTEE'S USE

BERKLEY BEDELL, IOWA
CHAIRMAN

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CHARLES HATCHER, GA.
DENNIS E. ECKART, OHIO

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Committee on Small Business
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November 23, 1982

TO: Members of the Subcommittee on
Energy, Environment and Safety

FROM: Berkley Bedell, Chairman

RE: Gasoline Marketing Hearings

The Subcommittee is scheduled to hold hearings on gasoline marketing on December 1 and 2. On both days, we will meet in the Committee's main hearing room, 2359-A Rayburn H.O.B., starting promptly at 9:30 a.m. and going until approximately 12:30.

As you will recall, the purpose of these hearings is to gain a better understanding of what is happening today in the retail gasoline marketplace and what changes have occurred there since petroleum products were decontrolled early last year.

The two days have been divided into one day for gasoline marketers and one day for refiners, although some adjustments may be made to accomodate witnesses' schedules. At this point, we expect to hear from representatives of the following organizations: Service Station Dealers of America: National Oil Jobbers Council; National Association of Texaco Wholesalers: Independent Gasoline Marketers Council; Society of Independent Gasoline Marketers of America; Arco; Exxon; Shell; and Texaco. Some of these groups may bring along representatives of affiliated local or regional organizations, and additional organizations are expected to be submitting comments for the record.

For your information, I am enclosing the following items which may be helpful to you in preparing for these hearings. They are:

1) An article from Oil Daily, discussing the most recent financial reports from the nation's major oil companies.

2) A staff memo describing the dearth of relevant information at the Department of Energy.

3) A staff memo presenting highlights of a recently-issued Federal Trade Commission report on merger activity in the petroleum industry.

4) A memo prepared by the Congressional Research Service, describing market withdrawals announced by the various major oil companies since 1978.

Additional material will be sent to you under seperate cover in the next few days.

If you have any questions about the upcoming hearings or desire any additional information concerning gasoline marketing, please feel free to contact our Subcommittee staff director, Marc Rosenberg, at ext. 58944.

Exhibit 1.—"Oil Daily" Article Describing Oil Company Financial Reports

OIL DAILY

FRIDAY, NOVEMBER 5, 1982 THE DAILY NEWSPAPER OF THE ENERGY INDUSTRIES NUMBER 7,765

Analysts See Few Surprises In Majors' Earnings Results

By Nick Snow

Oil Daily Staff Writer

THIRD QUARTER and nine-month financial results for the major U.S. oil companies held few surprises: The domestic downstream continued strong while international performance in general and U.S. exploration and production remained hard-hit.

A Closer Look

"I can't believe anybody was too surprised. It was apparent what was going to happen. U.S. refining and marketing margins were great, and the rest of the business was terrible," observed E.F. Hutton and Co.'s William Craig in New York.

But the quarter did contain some significant signals that suggest change may materialize in the next few months. "Domestic E&P didn't get any worse. As a matter of fact, it got a little better in general than in the first two quarters. It helped most companies, for example, to see their windfall profits tax bills continue to diminish," noted John Ryan of Rotan Mosle and Co. in Houston.

"There are always surprises. But generally, the third quarter was just more of the same. It continued in the doldrums, equally affected by the worldwide recession, strong dollar and continued evidences of inventory drawdown. I think, however, the fourth quarter will show the first visible signs of improvement," said Sanford Margoshes of Bache Halsey Stuart Shields in New York.

Points to Recession

Thomson McKinnon's Don Fernow said he considers gains by companies like Atlantic Richfield, Union, Standard of Ohio and Kerr-McGee "singular exceptions to a general downturn from the prior two quarters.

"More important than any other factor, I think, was a general worldwide recession. I don't feel that the declines in consumption and demand are the result of a switch to alternative fuels as some non-oil industry observers claim. These suffered from lower oil prices."

While the bright domestic downstream results were generally expected, their magnitude seemed somewhat surprising. "Quite frankly, the improvement we saw downstream was on the order of 12 or 13

(Continued on page A-6)

Majors' Marketing Results Keep Improving While Upstream Suffers

(Continued from page A-1)

percent over last year, but a good part of that was from inventory gains," said Eugene Nowak who tracks the domestics for Dean Witter Reynolds Inc. in New York. "That's not to take away from the downstream, particularly for Shell and Atlantic Richfield, which both reported record quarters. And since last year's third quarter was very, very strong, this year's performance was very, very satisfactory."

Of the U.S. majors, only Occidental Petroleum Corp. has not released quarterly and nine-month results. A spokesman told *The Oil Daily* that events connected with Oxy's proposed acquisition of Cities Service Co. have delayed the release.

Among the remainder, quarterly net earnings results ranged from dramatic year-to-year improvements for companies primarily involved in refining (84 percent for Amerada Hess and 54 percent for Ashland) to substantial drops from 1981 third quarter levels for companies with strong international postures (54 percent for Gulf, 48.6 percent for Texaco and 36 percent for Mobil).

Modest Improvement

But while the trend was for a generally weak upstream, indications also pointed toward modest improvement in the three-month period. "In a few cases, upstream did get worse. Arco had higher exploration expenses and some operating costs in Indonesia that got lumped into their E&P earnings. But it appears that Mobil, Sohio, Gulf, Exxon, Shell, Amoco and Phillips all improved over the first and second quarters," said Ryan.

In the international downstream, most of the analysts contacted by *The Oil Daily* saw problems continuing in Europe, particularly with the latest round of refinery closures and sales. "My guess is that there will be some more, particularly the topping plants," said Craig.

"It looks to me that Exxon has been a little slow in rationalizing their overseas refining," noted Ryan. "I just haven't seen anything they have done to compare with SoCal, Gulf or Texaco. Of course, we've always felt that Exxon had good refineries in Europe while the others didn't. But it just doesn't seem that having good capacity is doing you much good right now. It could be that Exxon will hang on and hope those operations will come back."

Margoshes said he expects more moves affecting European refineries. "It's a process that has a ways to go. While the rationalization of facilities tends to go on, it restrains current profit performance. These actions contain the seeds of future improvement, however, and we should begin to see the benefits next year," he told *The Oil Daily*.

Potentially Vulnerable

Most of the analysts agreed, however, that early signs point to continued domestic upstream improvement in the last three months of the year. They pointed to the $1 per barrel increase in posted crude prices by most of the majors. But Nowak saw natural gas as potentially vulnerable.

"Prices were strong, but production in terms of sales was down 14 percent. In the first quarter, it was down only 4 percent — not too bad — and in the second, it was 9 percent. Standard of Indiana had one of the most precipitous drops — 22 percent. But it speaks well for the company that it could handle such a drop and still have a good general quarter," he said.

"There still is a lot of concern about what's going to happen with crude prices," said Craig. "We'll find out a lot at the Dec. 9 OPEC meeting. If we can get a seasonal pickup in demand and inventories are where people want them to be, then a case can be made that inventories being drawn down helped meet 1982 demand. That means that the Saudis, if they aren't able to maintain a $34 price, might be able to keep it at least at a $32 level."

Generally, however, the analysts are guardedly optimistic. "I think we're at the bottom of the valley in earnings. I think we will see a steady, though not necessarily robust, improvement in the coming year. We'll see a possibly flat December quarter, followed by a gradual improvement next year," said Fernow.

THE OIL DAILY'S BOX SCORE OF THE MAJORS' EARNINGS DURING THE 3RD QUARTER

(In millions of dollars, except for per share figures)

	1982 Net	Per Share	1981 Net	Per Share	% Change	1982 Revenues
Exxon**	1,070	1.23	1,075	1.25	-0.5	25,331
Mobil	323	0.78	506	1.19	-36	15,534
Texaco	303	1.16	589	2.25	-48.6	11,800
Standard of California	459	1.34	527	1.54	-13	8,455
Gulf	146	0.82	316	1.63	-54	7,538
Standard of Indiana	559	1.92	608	2.08	-8	7,700
Atlantic Richfield	446.9	1.76	433.5	1.73	+3	6,700
Shell	442	1.43	471	1.52	-6	5,090
Conoco***	229	—	161	—	+42.2	4,732
Phillips	131.6	0.86	192.3	1.26	-32	4,000
Sun	152	1.25	210	1.68	-26	3,800
Occidental	Occidental has not reported.					
Standard of Ohio	487.3	1.97	470	1.92	+4	3,175
Getty	178.1	2.23	205.2	2.50	-13	3,073
Union of California	212.8	1.22	193.0	1.11	+10	2,770
Amerada Hess	80.1	0.95	43.5	0.51	+84	2,124
Ashland*	75.8	2.34	49.3	1.45	+54	2,300
Cities Service	25	0.33	77.6	0.94	-65	1,970.7
Tenneco	198	1.38	156	1.09	+27	3,674
Kerr-McGee	56.8	1.08	50.3	0.97	+12.9	913

. . . AND 1ST NINE MONTHS

	1982 Net	Per Share	1981 Net	Per Share	% Change	1982 Revenues
Exxon*	3,195	3.68	4,500	5.21	-29	77,480
Mobil	959	2.29	1,846	4.34	-48	47,727
Texaco	975	3.74	1,803	6.79	-18	36,300
Standard of California	952	2.78	1,809	5.29	-47	27,412
Gulf	623	3.41	930	4.77	-33	22,502
Standard of Indiana	1,411	4.83	1,538	5.27	-8	22,400
Atlantic Richfield	1,421.1	4.91	1,201.5	4.80	+3	19,900
Shell	1,117	3.78	1,240	4.02	-5.6	15,030
Conoco***	671	—	474	—	+41.6	13,943
Phillips	460.4	3.02	692.8	4.55	-34	11,850
Sun****	386	3.16	628	5.00	-38.5	11,600
Occidental	Occidental has not reported					
Standard of Ohio	1,420	5.74	1,470	5.98	-4	9,387
Getty	493.4	6.11	640.4	7.79	-23	9,275.9
Union of California	578.9	3.33	555.4	3.20	+4	8,160
Amerada Hess	125.0	1.48	164.3	1.95	-24	6,277.7
Ashland	180.9	5.29	90.0	2.22	+101	9,100
Cities Service****	152.7	1.96	225.8	2.72	-28	5,873.9
Tenneco	531	3.70	553	4.10	-4	11,223
Kerr-McGee	136.2	2.59	145.1	2.80	-6.1	2,762

*Ashland results are for fiscal year-end and fourth quarter

**Exxon results for 1982's third quarter and nine months were favorably affected by foreign exchange translation gains. Without these gains and without losses in corresponding 1981 periods, Exxon's operating earnings for the quarter were $945 million, 26.9 percent below those of the year-ago quarter. Nine-month operating earnings of $2.635 billion were 34.1 percent below those of the corresponding 1981 period.

***Conoco's 1981 earnings in both periods are pro forma figures provided by its parent, The DuPont Co., to reflect estimated contribution by Conoco if DuPont had acquired it on Jan. 1 of that year. Previous Conoco 1981 figures include those of Conoco Chemical which has since been incorporated into another DuPont division. Figures for both years are combined petroleum and coal and minerals segments from DuPont results.

****Cities Service 1982 third quarter earnings were adversely affected by an after-tax increase of $36 million in exploration costs and interest expense, and by a $21.4 million, or 28 cents per share, charge for a loss on sale of tankers. Approximately $45 million of 1982's nine-month income resulted from early extinguishment of debt.

EXHIBIT 2.—STAFF MEMO DESCRIBING GASOLINE MARKETING DATA SYSTEMS

BERKLEY BEDELL, IOWA
CHAIRMAN

NICHOLAS MAVROULES, MASS.
CHARLES HATCHER, GA.
DENNIS E. ECKART, OHIO

United States House of Representatives
Committee on Small Business
Subcommittee on Energy, Environment, and
Safety Issues Affecting Small Business
B-363 Rayburn House Office Building
Washington, D.C. 20515

SILVIO O. CONTE, MASS.
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SUBCOMMITTEE STAFF DIRECTOR
202-225-6944

DONALD C. [illegible]
MINORITY SUBCOMMITTEE COUNSEL
202-225-3420

November 3, 1982

TO: Hon. Berkley Bedell, Chairman

FROM: Marc H. Rosenberg, Staff Director

RE: Statistics on Gasoline Marketing

You may recall that you wrote to the Secretary of Energy on September 8, requesting certain data from DOE's Energy Information Administration. The purpose of the inquiry was to obtain statistics necessary to update gasoline marketing studies done in previous years by your staff, with the intent of having that information available for use by the Subcommittee at its upcoming hearings on recent developments in the gasoline marketplace.

The Department of Energy recently replied to your request. The bottom line is that DOE appears to be unable to provide the Subcommittee with any data that would be of use in the December hearings. Most of the reporting systems that we relied upon for data used in previous studies are no longer maintained and those systems that do exist apparently do not track data into the post-decontrol period.

The following is a summary of the information sought from the Energy Department and the agency's response.

Market Shares Monitoring System (Form P-306) - Tracked refiner sales of branded gasoline on a state-by-state basis, distinguishing between deliveries to different types of independent marketers and refiner-operated outlets. This information was used extensively by the Committee in a series of hearings held in 1979-80. DOE advises, "this data series was discontinued in October 1981."

Form EIA-151 - Tracked sales of gasoline from refiners to company-operated outlets, lessee dealers, open dealers, jobbers, end users, unbranded independents and others. This data was aggregated nation-wide and complemented Form P-306 information. DOE advises that this information was gathered for a once-only analysis and that they have no data for 1981 or 1982.

Financial Reporting System - Intended to yield information on the relative profitability of different segments of the oil industry (i.e., crude oil, transportation, refining and marketing). At hearings before this Committee in both the 96th and 97th Congresses, DOE witnesses stressed the potential value of this information. DOE has issued reports for the years 1977-1980, but they are basically unintelligible. Moreover, the analysis and data provided in the FRS reports is far short of what is needed to review gasoline marketing activities.

The Department sought to eliminate FRS last year, but was blocked by Congress. They now say that data pertaining to 1981 will probably become available in March 1983.

Prime Suppliers' Monthly Report (Form EIA-25) -Shows total company deliveries per state and each company's percentage of total deliveries per state. Monthly data are available through mid-1982, and DOE has provided samples of this information. However, marketing regions do not necessarily conform to state boundaries and deliveries do not always equal sales, so the data are not especially helpful. In transmitting this information, DOE observed, "...these data do not necessarily represent actual consumption, since not all gasoline delivered to a State is consumed in that State."

DOE has advised us that, "... a detailed break-out of market structure by State (i.e., wholesalers, jobbers, independents, refiner outlets) is not available from any of the data surveys currently in force. The EIA-782A, 'Monthly Petroleum Product Sales Report,' will provide some of this detail, but it is not scheduled for initiation until January 1983."

* * *

Mark Levine of the Subcommittee staff has spoken several times with personnel at the Energy Information Administration and will continue to seek whatever relevant data they may have. At this point, though, it appears as if DOE is not able to provide any useful information.

EXHIBIT 3.—STAFF MEMO REVIEWING FTC REPORT ON PETROLEUM INDUSTRY MERGERS

BERKLEY BEDELL, IOWA
CHAIRMAN

NICHOLAS MAVROULES, MASS.
CHARLES HATCHER, GA
DENNIS E. ECKART, OHIO

United States House of Representatives
Committee on Small Business
Subcommittee on Energy, Environment, and
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MINORITY SUBCOMMITTEE COUNSEL
202-226-3420

November 10, 1982

TO: Hon. Berkley Bedell, Chairman

FROM: Mark Levine, Subcommittee Staff

RE: FTC Views on the Role of Independent Gasoline Marketers in Local and Regional Markets

Background. Earlier this year, at the request of Congress, the Federal Trade Commission conducted an investigation of recent merger and acquisition activity involving large oil companies. Primarily because of growing concern among independent marketers of petroleum products that certain proposed mergers between "first tier" major oil companies (e.g., Exxon, Texaco, Gulf, Mobil, and Arco) and "second tier" companies (e.g., Marathon, Cities Service, Hess) could adversely affect competition in wholesale and retail gasoline markets, the FTC was asked to review oil company merger and acquisition strategies to assess their "impact on competition and on the availability and price of petroleum products to consumers."

The FTC used information obtained from internal oil company documents to better understand today's wholesale and retail gasoline marketplace. Their observations are of considerable relevance to the Energy Subcommittee's ongoing review of retail gasoline marketing practices.

The following is a review of highlights from the FTC's September 1982 report to Congress, Mergers in the Petroleum Industry.

THE FTC REPORT

Regional Markets. Because of insufficient data, the FTC was unable to examine concentration levels within local and regional gasoline markets. Nonetheless, the FTC report states:

> Evidence from company documents is certainly consistent with the presence of market power at various times in some localities or regions....An additional type of evidence found in company documents which bears on the possible existence of local or regional markets are company studies showing that at times prices and wholesale margins appear to be positively correlated with concentration and inversely correlated with the share of independents across regions. These studies indicate that at times there may be local or regional wholesale markets and that market power may be exercised within them.

In this light, the FTC report commented on the proposed acquisition of Marathon Oil Company by Mobil Oil Company, noting that the merger presented two potential competitive problems in gasoline marketing when its impact on local markets was examined. First, the report found, the market share of the two firms' combined marketing operations would be quite high, exceeding 30 percent in certain metropolitan areas. Second, the report said, "Mobil's policy of refusing to supply independents conflicted with Marathon's policy of freely supplying these independents. Thus, the acquisition could have threatened the independents' supply and reduced their competitive impact on the market."

Although the FTC calls the definition of specific geographical markets, "problematical", the report notes that, "In deciding to seek a preliminary injunction to prevent Mobil's acquisition of Marathon and Gulf's proposed acquisition of Cities Service, the Commission concluded that there is reason to believe that local and regional markets do exist."

The Role of the Independent Petroleum Products Marketer in Local and Regional Markets. The FTC report states that:

> Gasoline marketing for the past 20 years appears to have been characterized by a struggle between the majors (and especially the largest majors) versus the 'independents' (meaning the smaller refiner-marketers and private brand marketers).

The report goes on to say that:

> Supplies of unbranded rack gasoline to private brand marketers can inject an important competitive element into the markets in which such sales are made, prompting competitive pressures which may increase in proportion to the volume of unbranded sales. (The independents') presence as substantial factors in many markets makes price coordination by majors more difficult.

The FTC report also notes that the competitive role of the independent petroleum products marketers is well understood by the majors. The report states:

> Independents have traditionally tended to induce price competition in markets. This factor is acknowledged in internal company documents. For example, one company noted: "(T)he major problem has been the private branders - they have not gone along with price restorations except temporarily." Indeed, there is some evidence that independents may have induced medium size refiners with lower market shares or less advertised brands to adopt more price competitive strategies rather than follow marketing practices of the largest majors. As one company stated: "(It) is believed that additional major brand marketers with weak retail networks will adopt more competitive practices in relation to the nonmajor branders, or in some cases will increase wholesale sales.... Such moves will maintain pressure on the spread between refinery and pump prices."

Response of Major Oil Companies to Competitive Pressures From Independent Marketers. The FTC report observes that "(t)he most serious difficulty in entry or expansion faced by private brand independents may be the reluctance of the largest majors to sell wholesale gasoline to them."

The following excerpt from the FTC report quotes quite liberally from the oil companies' own documents, clearly showing that the majors have not been reluctant to use their substantial market power to exploit the weaknesses of the independent marketers.

> Numerous company documents indicate that the largest eight majors each adopted a corporate policy of not selling gasoline to independent marketers. These policies may constrain the ability of independents to maintain their position in a shortage market.
>
> Examination of these policies (as revealed by company documents) of these large refiners governing wholesale sales to unbranded independents over the last 10 years indicates that each of them took the position that their branded gasoline marketing strategies were vulnerable to inroads by private brand independents if independents could easily obtain wholesale gasoline supplies. Further, the large refiners appear to have acted similarly in response to this perception. The following quotations from the documents of eight different majors indicate similar policies in avoiding bulk unbranded sales to private brand independent marketers during the 1965-73 period prior to the imposition of regulatory control:

Company A	(Our company) does not make a practice of selling gasoline through unbranded jobbers; i.e., distributors who sell (our) gasolines under other brand names. We assume field managers understand and adhere to this policy.
Company B	Unbranded in all areas are to be backed out as rapidly as possible.
Company C	Independents usually do not call us, probably because we are not known as a supplier for them. Our objective is to keep it that way.
Company D	No sale of gasoline to outside private brand sector.
Company E	U.S. Marketing has long pursued a policy of not selling unbranded gasoline.
Company F	Among the numerous retail methods of operating service stations that have been avoided or eliminated by (our company) the following are most commonplace. (1) Independent, unbranded marketers.
Company G	Unbranded gasoline sales have been minimized and it is the continuing policy to eliminate this type of sale entirely to resellers or to service stations wherever possible.
Company H	Any and all requests for unbranded gasoline supply to be flatly refused, with no compromise.

(more)

That the policies may in fact have been implemented is suggested by data indicating that, in the aggregate, these eight refiners sold only a very small percentage of their gasoline output to unbranded independents throughout the years.

Data for the 1970's show a similar pattern, although DOE regulations and other changes in the gasoline marketing environment complicate the interpretation of the data. As a percent of their total gasoline sales, the largest eight refiners sold only 2.5 percent of their output to independents in 1972. Later under DOE "allocation" regulations, refiners were assigned some unbranded customers for mandated sales, and the top eight's sales to unbranded independents reached 6.5 percent of these majors' total gasoline sales in 1978.

The FTC report goes on to suggest that major oil companies can cause problems for independent petroleum products marketers by controlling their access to pipelines and terminals, especially in times of short supply. The report states:

> Although current conditions of excess gasoline supply may alleviate marketers' normal supply difficulties, in periods of lessened supply, marketers may encounter obstacles in arranging pipeline transportation and terminal access in a particular market. Especially for a nonintegrated marketing firm, the lack of availablity of pipeline space may sometimes be a problem. Although exchanges between companies of gasoline that is located at different points along a pipeline can provide an equivalent to pipeline access for individual companies, exchanges are not always possible, especially for aggressive marketers. In addition, exchanges cannot generally be used to increase aggregate supply in a given area.

In addition, despite the fact that the FTC report notes that exchange volumes make up as much as 45-75 percent of the sales of some large oil companies, many are reluctant to enter into exchange agreements with independents. An internal oil company document is cited by the report as an example:

> One company's documents indicated that its practice regarding exchanges with private brand companies has been to examine each exchange "to be sure that we are not giving the independent sector any... supply that they could not readily obtain from others." Another company document expressed its decision not to engage in a particular exchange based in part on its possible disruptive effect. A third company's documents contained a recommendation not to exchange with an "aggressive marketer."

Along these same lines, the FTC report points out that because "gasoline is a commodity with standardized, specifiable qualities such as octane rating and lead content", major brand marketing strategies are particularly vulnerable in local or regional markets where large quantities of gasoline are being sold in commercial or bulk sales. The report cites one company's internal analysis that said:

> If several of the large majors chose to abandon their service station businesses in favor of commercial or bulk sales, the independents would grow rapidly to a dominant position in the industry. This is already happening to some extent and is one of the reasons for current price problems.

Final Note. The FTC reports that independent petroleum products marketers have obtained significant market shares in virtually all regions in the U.S. The following chart appears in the report:

Market Share of Independents by Region[1]

Region	1980 Independent Share (percent)
New England	18
Mid Atlantic	26
Southeast	37
Florida	29
Great Lakes	43
Plains	54
Southwest	42
West Coast	22
Rockies	55
Total United States	35

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[1] Derived from U.S. Department of Commerce data.

The report notes that:

> At the same time that independents as a group have been growing, some majors have been losing shares in some areas of the country. The majors appear weakest in those areas where the independents have obtained the largest shares (the Midwest and Rocky Mountain states). Over the last several years, some majors have pulled out of areas where their share levels were declining and have moved to consolidate their positions in areas where they had significant market shares and independents held a relatively small market share. These shifts may lead to increased concentration in other areas.
>
> Among the shifts that have occurred are: Arco's and BP's exit from the Southeast (early 1970's); Amoco's pullback from the West Coast; Phillips' reduction in the Northeast; Sun's recently completed exit of the Dakotas, Minnesota, Wisconsin, Michigan, Nebraska and Kansas; Exxon's exit from the Chicago area; Mobil's exit from the Rocky Mountain states (early 1970's); and Cities Service exit from the Great Lakes states (1960's).
>
> There are also a number of pullouts which appear to be going on at the present time. These withdrawals include (1) Amoco's withdrawal from Texas and cessation of jobber supply in Montana, Oklahoma, Arkansas, most

of Kentucky, West Virginia, Maine, New Hampshire, Vermont, Washington, and Oregon, by October 1982; (2) Texaco's withdrawal from parts or all of 19 states in the northern Rockies, Midwest, and Great Lakes area by the middle of this year; Arco's ongoing pullout of Wisconsin, Indiana, Ohio, Michigan, and Illinois (except Chicago); Phillips Petroleum's announced interest in pulling out of the Northeast and plan to pull-out of the Dakotas and Wyoming; Sun's planned pullout from sections of Arkansas, Louisiana, Mississippi, and Tennessee; and Union Oil's withdrawal from some parts of the northern Rocky Mountain states.

Exhibit 4.—Library of Congress Study of Market Withdrawals by Major Oil Companies

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

November 22, 1982

TO : Honorable Berkley Bedell, Chairman
Subcommittee on Energy, Environment and Safety
Issues Affecting Small Business
House Committee on Small Business
Attention: Marc Rosenberg

FROM : Carolyn Brancato
Specialist in Commerce and Industry
Economics Division

Sylvia Morrison
Analyst in Industry Economics
Economics Division

Kevin Flaherty
Reference Assistant
Economics Division

SUBJECT : Partial and complete withdrawals of oil companies from domestic gasoline and distillate marketing

This responds to your request for information about withdrawals of oil companies from gasoline and distillate markets since 1978. In order to respond to your request, we have compiled relevant data from a number of sources and displayed them in three tables. Before describing exactly what the tables include and do not include, we would like to summarize the implications of the tables.

Table 1, Trade Publication Reports Since 1978 of Certain Oil Companies' Intent to Curtail or Discontinue Gasoline or Distillate Marketing Operations, establishes a chronological record that between 1978 and 1982 at least ten oil companies, including the top four U.S. companies, 1/ announced their intention to discontinue deliveries to certain areas of the United States. Company

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1/ By sales and profit levels.

spokesmen have explained the plans to curtail deliveries as the result of rising delivery costs, which make deliveries to points farther away than a certain radius from pipeline outlets unprofitable. CRS has not independently verified the information contained in the trade publication reports that form the basis for Table 1; nor has CRS researched each withdrawal announcement to see whether the planned withdrawals actually took place. In an effort to arrive at actual withdrawal experience, we examine in Tables 2 and 3 a specific segment of the market--branded gasoline retail outlets.

According to the data compiled in Table 2 (Branded Retail Outlets Operated in the United States by Selected Oil Companies, 1978 and 1981), between 1978 and 1981 the oil companies reduced the number of branded retail outlets they supplied, and they generally reduced the number of States in which they supplied dealers as well. However, there are exceptions to this trend. Union, Phillips, and Conoco slightly increased the number of branded retail outlets they supply, and Conoco and Getty operated in a very few more States as well. Again, the data are from a trade publication and have not been independently verified by CRS.

Some oil industry analysts suggest that this reduction in the number of outlets supplied was the expected reaction to the decontrol of gasoline distribution and pricing. 2/ The allocation system established by the Emergency Petroleum Allocation Act of 1973 required the companies to continue to supply all retail outlets they were supplying at the time of passage of the Act until the controls established by the Act expired or were removed, regardless of whether or not these deliveries netted the companies a profit. Decontrol, completed in January 1981, permitted the companies to reorder their delivery patterns and to assign top priority to profit. However, it should be recognized that certain other factors have

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2/ National Petroleum News. Service Stations Still Vanishing. April 1981. p. 27.

contributed to the general decline in the number of retail gasoline stations. These factors include (1) the decline in gasoline sales, (2) the streamlining of marketing operations to meet intensified competition, and (3) the decline in the margin (profit) the retail station earns.

Table 2 shows that all but two companies were marketing branded gasoline in fewer states in 1981 than in 1978. However, this accounting reflects only the net number of states—e.g. status in 1978 plus new introductions minus withdrawals equals status in 1981. Table 3, then, (States Where Branded Gasoline Outlets Were Completely Withdrawn or Introduced Between 1978 and 1981 by a Selected Group of Oil Companies) is an attempt to isolate the total number of withdrawals from the number of introductions. Because of time constraints, the data CRS compiled in Table 3 are for complete withdrawals only. It may be that withdrawal activities in states where there is not a complete withdrawal may have a more significant effect on the market. Therefore, we are attaching the underlying data which you can use to construct a withdrawal profile for companies and states where there is less than complete withdrawal. More information on the structure and content of the CRS tables follows.

Table 1

Table 1 is the result of our attempt to locate announcements made by oil companies since 1978 of their intent to curtail or discontinue their domestic gasoline or distillate marketing operations. The list may not be comprehensive.

To locate reports of these announcements in petroleum trade publications, we used the American Petroleum Institute's Petroleum/Energy Business News Index. API indexed each issue of at least six publications, which are listed on the title pages we have enclosed. An abstract-entry search of the 1979 Cumulative Issue for withdrawal announcements in the categories we thought to be relevant showed that market withdrawals are most likely to be listed under any of six headings: "Dealers," "Heating Fuel," "Marketing," "Motor Gasoline," "Sales," and "Service Stations." We searched the entries under these headings in the 1978 Cumulative Issue and the monthly issues from January 1980 through June 1982, and we then referred to one report of each withdrawal announcement cited during the entire period. When more than one report of a given announcement was cited, we used only one; we no longer have in our collection some of the older issues of the daily serials that were indexed. The year of the first-published report of intent to withdraw from a market appears in column 1, whether or not we referred to that report for the information in columns 3 and 4.

Though the July through September 1982 issues of the *Index* are not yet available to us, we checked all of the issues during that period of *Oil and Gas Journal*, *National Petroleum News*, and *Petroleum Intelligence Weekly* and found no report of a withdrawal announcement.

While Table 1 provides information on *intended* withdrawals from any aspect of gasoline or distillate marketing operations, Tables 2 and 3 cover *actual* market withdrawals and expansions through branded gasoline retail outlets that are reported by the oil companies to have taken place between 1978 and 1981. They do not reflect any marketing changes since 1981.

The figures in Tables 1 and 2 are compiled from the 1979 and 1982 issues of the *National Petroleum News Factbook*. Information is included for only the 14 companies operating the most branded retail outlets in the most states in 1978 and for which data are available in the NPN tables. (Each of these companies operated at least 5,000 outlets in at least 26 states that year.) Information on other companies can be found in the enclosed copy of the NPN tables, though the 1978 and 1981 lists are not comprehensive and not entirely comparable; not all of the same domestic marketing companies were sent questionnaires both years and not all of the recipients responded.

Table 2

Table 2 shows the net change between 1978 and 1981 in the number of domestic branded retail outlets operated by each of the 14 companies and the number of states in which each operates. Columns 2 and 3 show the number of outlets operated in 1978 and 1981 by each company. Columns 4 and 5 show the number of states where branded gasoline was marketed by each company in both years.

Table 3

Table 3 shows the states where complete withdrawals and entries of branded retail outlets were effected between 1978 and 1981 and the number of outlets involved. Column 2 lists the states from which each of the 14 companies completely withdrew its branded gasoline outlets, and column 4 lists the states where branded outlets were introduced. Columns 3 and 5 list the numbers of outlets involved.

Table 1. Trade Publication Reports Since 1978 of Certain Oil Companies' Announced Intent to Curtail or Discontinue Gasoline or Distillate Marketing Operations 1/

Year of Withdrawal Announcement	Company	Affected Products, Retail Outlets, or Distributors	Affected States	Source
1978	Conoco	All marketing properties	Colo., Idaho, N. Mex., Mont., Oreg., S. Dak., Wash., and Wyo.	Oil and Gas Journal 1/23/78
1978	Texaco	450 retail outlets	Minn., N. Dak., and parts of S. Dak., Nebr., Kans., Iowa, and Wis.	Oil and Gas Journal 3/27/78
1978	Mobil	36 owned or leased stations receiving direct supply, 51 non-lessee outlets, and 71 distributors	Colo., Utah, Wyo., Mont., and Idaho	Oil Daily 6/29/78
1978	Union	6 retail properties and 10 distributors	Utah and Idaho	Oil Daily 6/30/78
1978	Gasland	147 retail outlets	--	Platt's Oilgram News 11/20/78
1979	Texaco	All products but aviation fuel	Mich., Ohio, and parts of N. Y., Wis., and Ind.	Oil Daily 3/2/79
1979	Exxon	Direct heating oil operations	7 states from Mass. to Va.	NPN 2/ 8/79
1980	Kayo		Maryland	Oil Daily 5/29/80
1980	Gulf	235 retail outlets	Colo., Nev., and Ariz.	NPN 1/81
1980	Texaco	263 direct-supplied outlets and 90 wholesalers	Wis., Ohio, and parts of Iowa, Ill., Kans., Ken., Mo., and W. Va.	NPN 1/81
1980	Getty	Skelly brand	Ark., La., Miss., N. Mex., and Tex.	NPN 1/81
1981	Phillips	27 distributors	Northeastern United States, north and east of Md.	Platts' Oilgram News 2/11/81
1981	Consumers	36 retail outlets	Mo., Kans., Ark., and Okla.	NPN 3/81
1981	Sun	DX brand	All or parts of 8 midwestern states	NPN 4/81
1981	Amoco	Dealer and distributor gasoline and distillates	Tex., Mont., Okla., Ark., Ky., W. Va., Maine. N.H., Vt., Wash., and Oreg.	Oil and Gas Journal 11/23/81
1982	Cheker	50 retail outlets	Midwest and Southeast	NPN 5/82
1982	Gulf	Unbranded gasoline, all distillates, and 131 distributors	Utah, Wyo., Colo., N. Dak., S. Dak., Nebr., Iowa, Minn., Wisc., and parts of Mich. and Kans.	NPN 5/82

1/ CRS has not verified the information presented in these reports and cited here.

2/ National Petroleum News.

Table 2. Branded Retail Outlets Operated in the United States by Selected Oil Companies, 1978 and 1981 1/

(1)	(2)	(3)	(4)	(5)
	Number of Branded Retail Outlets		Number of States Where Branded Gasoline Is Marketed 1/	
Company	1978	1981	1978	1981
Texaco Inc.	27,324	22,490	51	50 2/
Exxon Co., U.S.A.	23,807 3/	20,585	44	40 4/
Amoco Oil Co.	22,402 5/	20,061	47	46
Mobil Oil Corp.	18,641 6/	16,564 7/	48	45
Shell Oil Co.	16,985	13,665	39 8/	36
Gulf Oil Corp.	15,738 9/	13,870	35	30
Chevron U.S.A., Inc.	14,555	12,748	40	39 10/
Union Oil Co. of Calif.	12,374	12,529	45	44
Phillips Petroleum Co.	10,998 11/	12,327 12/	39	38
Sun Co. 13/	10,222 14/	8,361	37	33
Atlantic Richfield Co. 15/	8,487 16/	7,122	36	30
Conoco, Inc. 17/	5,486	4,885	27	28
Cities Service	5,302	5,784	32	31 18/
Getty Oil Corp.	5,137	4,700	26	28

1/ Compiled by CRS from: National Petroleum News Factbook. Branded Retail Outlets in the United States. Mid-June 1979 and mid-June 1982.

This table comprises the 14 companies listed in the above source with the greatest number of domestic branded retail outlets operating in the greatest number of states, including the District of Columbia. The figures were supplied NPN by participating companies in response to annual NPN questionnaires. CRS has made no attempt to verify the totals, but we do note apparent inconsistencies (see notes 2, 4, 8, 10, and 18). The companies are ranked by numbers of branded retail outlets in 1978. The decision to include only the 14 companies with the largest market shares was arbitrary; the NPN tables provide national and state-by-state figures for several hundred companies.

2/ Though in the state-by-state breakdown the NPN tables indicate the presence of at least one branded retail outlet in 1981 in 51 states (including the District of Columbia), the national total of states in which branded gasoline was marketed is listed as 50. Either one state was mistakenly listed by either Texaco or NPN as having outlets, or an error was made in arriving at the national total.

3/ Preliminary - includes an adjustment of +798 retail outlets from prior years.

4/ The NPN state-by-state breakdown indicates the presence of branded retail outlets in 42 states in 1981. See footnote 2.

5/ Includes Omega Oil Co.

6/ Includes Sello, Reelo, Hi-Val, and Big-Bi.

7/ Includes Sello, Reelo, Hi-Val, Big-Bi, and Lo-Lo.

8/ In the NPN 1978 state-by-state breakdown, Shell is listed as having operated branded retail outlets in 40 states rather than the 39 listed as the national total of states operated in. See footnote 2.

9/ Does not include 1,630 jobber outlets. Includes E-Z-Go, Go-Lo, and NSSI.

10/ Though Chevron is listed in the 1981 NPN table as having marketed branded gasoline in 39 states that year, the breakdown indicates that it operated branded retail outlets in 37. This discrepancy could be due to an error (see footnote 2), or to the possibility of a company distributing in a state where it has no outlets by, for example, supplying a customer across a border through a branded jobber, or to both.

11/ Includes Pyramid Oil Co., Tallman Oil Co., Metro 66, and Aero Oil Co.

12/ Includes Aero Oil Co.

13/ Sunmark Industries figures in the 1978 NPN table are comparable to the Sun Co. figures in the 1981 NPN table. Sunmark, now Sun Refining and Marketing, was Sun Co.'s wholly-owned marketing subsidiary.

14/ Includes Mohawk Valley Oil, Montour Auto Service, Kerr Gas & Oil, Kenco Petroleum, Mid-State Oil Co., Modern Oil Co., Wilderson Oil Co., Hotchkiss Oil Co., Thill Oil Co., and Stop-N-Go Foods Inc.

15/ Includes Prestige Stations, Inc. 1981 data as of 12/21/81.

16/ Estimated.

17/ Now a subsidiary of Du Pont Co.

18/ Though the total states where branded gasoline is marketed is listed as 31 in 1981, the breakdown indicates that Cities Service operated branded retail outlets in only 17. This could be due to an error (see footnote 2), or to the possiblity of marketing in a state without operating any outlets there (see footnote 10), or to both.

Table 3. States Where Branded Gasoline Retail Outlets Were Completely Withdrawn or Introduced Between 1978 and 1981 1/

(1) Company	(2) States Where Outlets Completely Withdrawn	(3) Total Outlets in 1978	(4) States Where Outlets Introduced Between 1978 and 1981	(5) Total Outlets in 1978
Texaco Inc.	--	--	--	--
Exxon, U.S.A.	Ill.	26		
	Wis.	22		
Amoco Oil Co.	Ore.	2		
Mobil Oil Corp.	Mont.	47	Miss.	1
	Idaho	39		
	Wyo.	54		
	Colo.	121		
Shell Oil Co.	Maine	25		
	Vt.	5		
	Ark.	1		
	Utah	1		
Gulf Oil Corp.	Mo.	11		
	Ariz.	29		
	Nev.	6		
	Wash.	1		
	Calif.	328		
Chevron, U.S.A. 2/	Del.	22	Ill.	48
	D.C.	1	Mich.	47
	Va.	8	Wis.	9
	W. Va.	4		
	S.C.	118		
	N.C.	1		
Union Oil of Calif.	Wyo.	2		
Phillips Petroleum Co.	D.C.	3		
Sun Co.	Wisc.	71	Ala.	60
	Miss.	84		
	N. Dak.	1		
	S. Dak.	17		
	Tex.	3		
Atlantic Richfield Co.	Ga.	1		
	Fla.	1		
	Ky.	1		
	Ala.	152		
	Ark.	4		
	Okla.	16		
Conoco, Inc.	Wis.	77	N.C.	15
	Ala.	29	Ohio	16
	Miss.	46	Tenn.	19
Cities Service Co. 2/	Del.	7	Okla.	29
	D.C.	8		
	W. Va.	15		
	N.C., S.C., Tenn.	1,164		
	Ga.	265		
	Fla.	425		
	Ohio	44		
	Ind.	151		
	Ill.	130		
	Mich.	63		
	Wis.	192		
	Ky.	4		
	Ala.	470		
	Miss.	166		
	Minn.	3		
Getty Refining & & Marketing Co.	La.	43	Mich.	6
	N. Mex.	21	Wyo.	3
			Ariz.	7
			Calif.	151

1/ Compiled by CRS from: National Petroleum News Factbook. Branded Retail Outlets in the United States. Mid-June 1979 and mid-June 1982.
The 14 companies listed here are those appearing in the NPN 1978 and 1981 tables with the most stations in the most states. CRS has not independently verified this information. (See Table 2, footnote 1.)

2/ It is possible that Chevron still marketed branded gasoline in two of these states in 1981 even though it no longer operated branded retail outlets there. (See Table 2, footnote 10.)

3/ It is possible that Cities Service still marketed branded gasoline in 14 of these states in 1981 even though it no longer operated branded retail outlets there. (See Table 2, footnote 18.)

APPENDIX B.—CORRESPONDENCE REGARDING TESTIMONY OF JAN C. LUNDBERG

EXHIBIT 1.—ADDITIONAL COMMENTS BY MR. LUNDBERG

LUNDBERG SURVEY
INCORPORATED

12041 STRATHERN STREET
P.O. BOX [illegible]
NORTH HOLLYWOOD, CA 91609-0996
(213) 736-5111
TWX # 1 910 4982739 LUNDBERG LSA

The Honorable Berkley Bedell
United States House of Representatives
Subcommittee on Energy, Environment and Safety
B-363 Rayburn House Office Building
Washington, D. C. 20515

December 21, 1982

RE: additional comment

Dear Mr. Bedell:

[It was a pleasure to appear before your Subcommittee, Dec. 1, and I return the transcript with my few corrections. Now follows Additional Comment.]

Mr. Bedell had asked Jan Lundberg (p. 14, lines 286-293) whether [DOE] "... is at this time negligent in not furnishing the data that is really needed by the industry... or were they previously supplying data that was readily available from people such as yourself anyway?"

My answer (p. 14, lines 295-300) should be documented with the following damning evidence in DOE's "Monthly Energy Review" for Nov. 1982. It persists in publishing a woefully wrong-headed summary of gasoline prices in the U.S. from 1974 through to Sept. of 1982 in this issue. Any member of the Subcommittee will be shocked to see this on P. 82:

PRICE U. S. City Average Retail Prices for Motor Gasoline.

1974 etc.		Leaded Regular	Unleaded Regular	Leaded Premium	Average for All Types
1982	January	128.5	135.8	145.6	134.1
	etc.	etc.	etc.	etc.	etc.
	etc.	etc.	etc.	etc.	etc.
	September	123.6	130.8	144.1	129.5

This outrageously inept report to the nation includes Leaded Premium, whose grade weight determined by Ethyl Corp. is less than 1/10th of 1% of all sales. Unleaded Premium is 10.6% of all grades sold, but is omitted! This discredits DOE's "129.5" as a spurious as well as a phony-baloney "Average." BLS, cited by DOE, is either also wrong-headed, or doesn't even see the ongoing error.

Our own data [EIA buys it!] shows all four grades. The same Sept. shown:

1982 September	Leaded Regular	Unleaded Regular	Leaded Premium	Unleaded Premium	Weighted* Average
	122.72	129.30	141.29	138.69	127.30

Our weights combine full-service/self-service and taxable sales by all states.

Mr. Bedell, the above example of DOE-EIA's messing up the overall price by "seeing" only 3 grades, when they subscribe to ours, including all 4 grades, answers your careful question. I append a copy of the "Review"'s p. 82.

Very truly yours,

Jan C Lundberg

Jan C. Lundberg

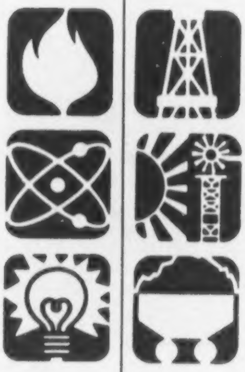
Enclosures as indicated.

DOE/EIA-0035(82/11)

Monthly Energy Review

November 1982

Energy Information Administration
U.S. Department of Energy



Price

U.S. City Average Retail Prices for Motor Gasoline[1]

		Leaded Regular	Unleaded Regular	Leaded Premium	Average for All Types
		Cents per gallon, including tax			
1974	**AVERAGE**	**53.2**	**NA**	**56.9**	**NA**
1975	**AVERAGE**	**56.7**	**NA**	**60.9**	**NA**
1976	**AVERAGE**	**59.0**	**61.4**	**63.6**	**NA**
1977	**AVERAGE**	**62.2**	**65.6**	**67.4**	**NA**
1978	**AVERAGE**	**62.6**	**67.0**	**69.4**	**65.2**
1979	**AVERAGE**	**85.7**	**90.3**	**92.2**	**88.2**
1980	January	108.6	113.1	114.9	111.0
	February	115.9	120.7	123.3	118.6
	March	120.2	125.2	127.7	123.0
	April	121.2	126.4	129.2	124.2
	May	121.5	126.6	129.5	124.4
	June	121.7	126.9	130.0	124.6
	July	121.6	127.1	130.7	124.7
	August	121.0	126.7	131.0	124.3
	September	119.7	125.7	130.4	123.1
	October	118.8	125.0	130.1	122.3
	November	118.8	125.0	129.9	122.2
	December	119.7	125.8	131.0	123.1
	AVERAGE	**119.1**	**124.5**	**128.1**	**122.1**
1981	January	123.8	129.8	133.8	126.9
	February	132.1	138.2	141.0	135.3
	March	135.2	141.7	144.9	138.8
	April	134.4	141.2	145.1	138.1
	May	133.3	140.0	144.7	137.0
	June	132.4	139.1	144.6	136.2
	July	131.5	138.2	144.6	135.3
	August	131.0	137.6	144.4	134.8
	September[2]	130.5	137.6	145.6	135.8
	October	129.9	137.1	145.7	135.3
	November	129.7	136.9	146.2	135.1
	December	129.3	136.5	146.0	134.8
	AVERAGE	**131.1**	**137.8**	**143.9**	**135.3**
1982	January	128.5	135.8	145.6	134.1
	February	126.0	133.4	143.8	131.8
	March	120.6	128.4	140.7	126.8
	April	114.8	122.5	136.8	121.0
	May	116.6	123.7	137.9	122.4
	June	124.2	130.9	140.[illegible]	129.6
	July	126.3	133.1	145[illegible]	131.8
	August	125.4	132.3	145.8	131.0
	September	123.6	130.8	144.1	129.5

Geographic coverage: 1974 through 1977—56 urban areas; 1978 forward—85 urban areas.

[1] See Note 5 on the last two pages of this section.

[2] Beginning with September 1981, the Bureau of Labor Statistics changed the weights used in the calculation of average motor gasoline prices. In the average for all types category, gasohol is now included and unleaded premium is weighted more heavily.

NA = Not available.

Sources: • See the last two pages of this section.

EXHIBIT 2.—COMMENTS BY J. ERICH EVERED, ADMINISTRATOR, ENERGY INFORMATION ADMINISTRATION

Department of Energy
Washington, D.C. 20585

JAN 20 1983

The Honorable Berkley Bedell
Chairman, Subcommittee on Energy,
Environment and Safety
House Small Business Committee
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

On December 1, 1982, Jan C. Lundberg of the Lundberg Survey testified before your subcommittee, ostensibly to provide background data to set the hearing in perspective. Mr. Lundberg used that opportunity for a number of unfounded statements and implications concerning the Energy Information Administration (EIA). A copy of his prepared text was sent to the Department of Energy (Enclosure 1). On December 31, 1982, Dan Lundberg used his publication "Lundberg Letter" for an even more strident attack on EIA, invoking your name and mentioning the December 1 hearing (Enclosure 2). Since the elder Lundberg enjoys considerable popularity with the media, more attention is paid to such attacks than might normally occur. I want to take this opportunity to set the facts straight and ensure that you are not misled about EIA's activities.

In his December 1 testimony the following points were stated or implied by Jan Lundberg:

- DOE prefers not to utilize private sector data;
- EIA mixes American Petroleum Institute (API) petroleum stocks data into its own publications;
- DOE has belatedly subscribed to Lundberg's Share of Market data;
- As a result of not subscribing to Lundberg's services, EIA has made frequent mistakes in its gasoline data, especially demand in June 1982; and
- Only private sector data reflect trends in dealer/jobber margins.

Each of these points is false. Detailed background and facts on each point are included in Enclosure 3.

In the December 1 "Lundberg Letter" Dan Lundberg built upon his complete lack of familiarity with the fundamental retail gasoline price data collected by the Bureau of Labor Statistics and his failure to understand footnotes to these data as published in EIA's Monthly Energy Review to construct his belittling tirade against us. In this case I believe the letter written to Mr. Lundberg by Jimmie Petersen, Director of EIA's Office of Oil and Gas, (Enclosure 4) addresses the subject adequately without further comment.

Dan Lundberg reportedly does some things well. The retail gasoline price data he gathers and sells have some utility. Mr. Lundberg, as I mentioned above, enjoys some measure of popularity with the general media as an analyst and commentator -- frequently mislabeled as "expert" -- on the petroleum industry. In point of fact, however, to my knowledge he enjoys little esteem among professionals in the very industry of which he claims to be an analyst.

I trust this letter corrects any misunderstandings which might have occurred concerning the Energy Information Administration and EIA's petroleum product information programs. We take quite seriously our responsibility to provide the Congress, the Executive Branch, industry and the general public with accurate, objective, fully documented energy information.

If you or your staff have any questions about these or other EIA activities, please let me know.

Sincerely,

J Erich Evered

J. Erich Evered
Administrator
Energy Information Administration

4 Enclosures

Enclosure 1

REMARKS BY JAN C. LUNDBERG 9:30 A.M., DECEMBER 1, 1982
VICE PRESIDENT,
LUNDBERG SURVEY, INC.

BEFORE THE SUBCOMMITTEE ON
ENERGY, ENVIRONMENT, AND SAFETY
OF THE HOUSE SMALL BUSINESS COMMITTEE
CHAIRMAN, THE HON. BERKLEY BEDELL

LADIES AND GENTLEMEN:

MY PURPOSE IN APPEARING HERE TODAY IS TO TRY TO CORRECT A LONG-STANDING MISAPPREHENSION THROUGHOUT OUR FEDERAL GOVERNMENT AS TO WHAT VITAL NATIONAL PETROLEUM PRODUCTS DATA ARE AVAILABLE AT LEAST FROM THE PRIVATE SECTOR.

THE DEPARTMENT OF ENERGY HAS, FOR YEARS, PERMITTED TWO WRONG-HEADED IMPRESSIONS TO BE ENGENDERED SIMULTANEOUSLY: THE FIRST ONE IS THAT THERE ARE NOT SUFFICIENT USABLE DATA AS TO PETROLEUM PRODUCT PRICES FOR THE NATION FROM PRIVATE SECTOR SOURCES -- YET THE DOE SUBSCRIBES TO PRIVATE SECTOR DATA TO CHECK ON THE DOE'S OWN POSSIBLE RELIABILITY. THE SECOND IMPRESSION DOE ENGENDERS AS AN APPARENT POLICY, IS THAT IT PREFERS TO SUFFER A LACK OF CERTAIN CRITICAL DATA THAN TO UTILIZE PRIVATE SECTOR DATA, AS IF IT DOES NOT CARE TO RECOGNIZE ANY OUTSIDE COMPETENCE.

THE AMERICAN PETROLEUM INSTITUTE PRODUCES ENTIRELY RELIABLE SUPPLY DATA IN A TIMELY FASHION. THE ENERGY INFORMATION ADMINISTRATION (EIA) FOLDS THE AMERICAN PETROLEUM INSTITUTE'S (API'S) STOCKS AND INVENTORY DATA INTO THEIR OWN STATISTICAL PIE, BUT THIS RELIANCE ON OUTSIDE DATA SHOULD BE BETTER KNOWN AND MORE APPRECIATED THAN IT IS.

THERE ARE SEVERAL GOOD SOURCES OF PETROLEUM INDUSTRY INFORMATION AMONG THE TRADE PRESS. MUCH INFORMATION IS AVAILABLE FROM PLATT'S OILGRAM, A DAILY, THE OIL DAILY, AND FROM SUCH WEEKLY TRADE LETTERS AS THE OIL BUYERS GUIDE, OIL EXPRESS, U.S. OIL WEEK, AND PLATT'S BULLETIN.

I INTEND NOT A SINGLE SELF-SERVING COMMENT HERE TODAY, BUT IT SHOULD BE RECALLED THAT AT THE VERY BEGINNING OF THE REGULATED YEARS, THE COST OF LIVING COUNCIL (COLC) UTILIZED MY COMPANY'S TAXABLE GASOLINE SHARES OF THE MARKET, FOR ALL 50 STATES AND WASHINGTON, D.C. THESE DATA, WHICH ARE NOT DERIVED THROUGH ANY ARBITRARY METHODOLOGY, ARE STRAIGHTFORWARD ACCOUNTANCY SUPPLIED BY STATE AGENCIES AND PRIVATE COMPANY SUBMISSIONS.

BECAUSE THESE SHARE OF MARKET DATA ARE SUBSCRIBED TO BY MANY OIL COMPANIES, THE SYNDICATED FEE PER STATE PER MONTH IS NO MORE THAN $30. I MENTION THIS BECAUSE THE DOE SHOULD NOT

BE PARDONED FOR NOT SUBSCRIBING TO SUCH A PRIVATE AND UNIQUELY AVAILABLE DATA BASE BECAUSE OF ANY SIGNIFICANT COST. BECAUSE FOR ONE MONTH, NOW, D.O.E. HAS RESUMED SUBSCRIBING TO THIS DATA BASE, SO I AM NOT VENTILATING A GRIEVANCE. FOR THE PAST 30 DAYS, AFTER GETTING ALONG WITHOUT SUCH DATA FOR YEARS, THE E.I.A. NOW KNOWS WHAT IS HAPPENING IN TAXABLE GASOLINE VOLUME, AT LEAST BY REGION, THOUGH NOT ON A STATE-BY-STATE BASIS.

HOWEVER, DURING THOSE YEARS OF D.O.E.'S NOT TAKING THESE DATA INTO ACCOUNT THERE WERE FREQUENT MISTAKES IN CONSTRUEING REAL WORLD DEVELOPMENTS. THAT IS BECAUSE THE D.O.E'S MANDATED INFORMATION MEASURES ONLY PRIMARY STORAGE DEMAND CHANGES. EVEN THAT MEASURE, HOWEVER, OMITS TO INCLUDE MUCH IMPORTED AND THEN INDEPENDENTLY BLENDED STOCKS, WHICH DO, HOWEVER, FIND THEIR WAY INTO OUR TAXABLE REPORTS. FOR EXAMPLE, THE E.I.A. VOICED A NOTION A FEW MONTHS AGO THAT GASOLINE DEMAND, FOR JUNE, WAS ON THE UPSWING. E.I.A. WAS WRONG. TAXABLE SALES SHOWED, INSTEAD, A 1.6% DROP IN DEMAND. AS FOR OUR COMPANY'S DIESEL FUEL MONTHLY REPORTS, E.I.A. LACKS INFORMATION AS TO THAT DATA BASE OF TAXABLE SALES.

FAILING TO UTILIZE SUCH NATIONAL DATA, THE E.I.A. CANNOT HELP IN THE COORDINATION OF FEDERAL INFORMATION, WHERE THE PRESIDENT AND OUR TRANSPORTATION SECRETARY PINCH-HIT A SUPPOSITION THAT A PROJECTED 5¢ FEDERAL TAX INCREASE WORKS OUT AT $30 ANNUAL EXPENSE TO THE AVERAGE MOTORIST (ON AN ASSUMPTION OF 600 GALLONS CONSUMED ANNUALLY, WHICH WAS THE CASE BACK IN 1980). INSTEAD, ON THE BASIS OF ON-ROAD TAXABLE CONSUMPTION, THE FIGURE FOR 1983 WOULD BE $23.95.

AGAIN, A LACK OF SOLID CONTEMPORARY INFORMATION AT THE D.O.E. STANDS IN THE WAY OF CORRECT COORDINATION OF INTELLIGENCE AMONG THE DEPARTMENT OF TRANSPORTATION, THE OFFICE OF MANAGEMENT AND BUDGET, AND OUR LEGISLATIVE FACT-FINDERS. THE D.O.E. COULD HAVE PREVENTED THE FEDERAL GOVERNMENT FROM CALCULATING A $5.5-BILLION REVENUE FIGURE FROM THE PROSPECTIVE TAX INCREASE, WHEN THE 5¢ TAX WOULD BRING $5.7-BILLION. MEANWHILE, ALSO LEFT OUT OF PUBLIC APPRECIATION, IS ANOTHER $1-BILLION IN ADDITIONAL HIGHER USER TAXES POSSIBLY TO BE ADDED BASED UPON STATEMENTS BY D.O.T. SECRETARY DREW LEWIS.

[I HAVE BROUGHT WITH ME COPIES OF OUR LUNDBERG LETTER OF LAST FRIDAY WHICH CORRECTED THE MISCALCULATION OF WHAT MOTORISTS WOULD HAVE TO PAY ANNUALLY ON THE 5¢ INCREASE, AS WELL AS THE REASONING BEHIND THE LIKELIHOOD OF NOT $5.5-BILLION, BUT $6.7-BILLION DOLLARS IN ANTICIPATED REVENUE.]

THE D.O.E. UTILIZES A LIMITED RECAP OF MY COMPANY'S SOLE-SOURCE SUPPLY OF NATIONAL RETAIL AND WHOLESALE PRICES AND DEALER MARGIN SURVEYS EACH TWO WEEKS, BASED UPON A NATIONWIDE SAMPLE OF 18,000 MOTORFUEL OUTLETS, DELIVERED TO THE PETROLEUM INDUSTRY AND TO THE E.I.A. 24-HOURS AFTER PROCESSING. THE E.I.A. UTILIZES PAD DISTRICT AND D.O.E. REGIONAL SUMMARIES OF OUR RETAIL DATA.

THE PETROLEUM INDUSTRY HAS UTILIZED OUR DETAILED MARKET BY MARKET SURVEYS FOR OVER 25 YEARS, BUT THE D.O.E. AIMS UNENDINGLY TO REPLICATE ACTUAL MARKETPLACE DATA THROUGH MANDATORY QUESTIONNAIRES, WHICH HAVE IN THE PAST SUFFERED FROM INHERENT FLAWS IN REPORTING FORMATS AND IN ALMOST UNBELIEVABLE DELAYS BEFORE THE DATA CAN BE PUBLISHED.

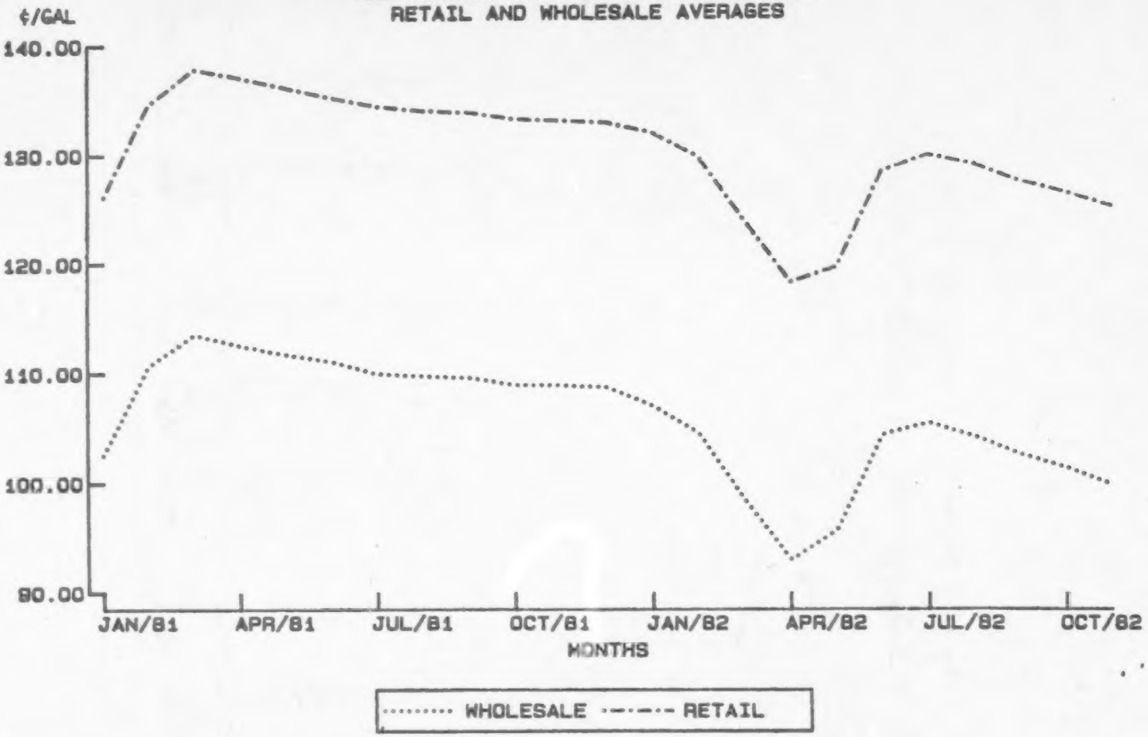
A CURIOSITY OF PRESENT TIME IS THAT THE D.O.E. HAS NOT ANTICIPATED THE WHOLESALE DISTRIBUTORS PROBLEMS WHICH HAVE IN EFFECT LED TO A MEETING SUCH AS THIS, THE SUBSTANCE OF WHICH HAS SEIZED THE CONSIDERATION OF THIS COMMITTEE. THE D.O.E. WAS CERTAINLY AWARE THAT THE PRESIDENT HAD DECONTROLLED GASOLINE. THIS SHOULD HAVE BEEN THE SIGNAL TO THE D.O.E. TO EVALUATE WHAT COULD HAPPEN TO DEALERS AND JOBBERS THE COUNTRY OVER, WITH OIL COMPANIES RETURNING TO THE FREE MARKET, AND ALLOCATING TO WHOMEVER THEY PLEASE AT WHATEVER PRICES THEY CARE TO NOMINATE. NO; IT WAS LEFT TO THE PRIVATE SECTOR TO TRY TO POINT UP TRENDS OF VITAL CHANGES TAKING PLACE IN DISTRIBUTION LOGISTICS. I HAVE ALSO BROUGHT FOR YOU THE NOVEMBER 19TH 1982 LUNDBERG LETTER.

ATTACHED IS A GRAPH OF RETAIL AND WHOLESALE WEIGHTED AVERAGE PRICES FROM JANUARY 1981 TO NOVEMBER 1982.

WHILE OUR SHARE OF MARKET AND WHOLESALE FUEL SURVEYS OF 170 MARKETS SHOW NO ACTUAL SHORTAGES OR SUPPLY EMBARRASSMENT TO RURAL COMMUNITIES, PULLOUTS AND DISTRIBUTION REORGANIZATIONS HAVE ACCELERATED OVER THE LAST YEAR. SUCH OIL COMPANY DEVELOPMENTS ARE A RESULT OF EACH ONE PURSUING ITS OWN PROFIT MOTIVE AND DRIVE FOR HIGHER PRODUCTIVITY. OUR JOBBER CALCULATIONS SHOW A REDUCED MARGIN POSITION. SINCE MANY OIL COMPANIES FIND IT UNPROFITABLE TO SERVE CERTAIN REGIONS, HOW WELL JOBBERS ARE ABLE TO CARRY ON DEPENDS UPON THEIR CONTINUED VIABILITY.

THE OIL COMPANIES, DUE TO NATIONAL ANTITRUST POLICY, ARE UNABLE TO MEET WITH ONE ANOTHER TO DEAL WITH RURAL AREA VULNERABILITY TO POSSIBLE SUPPLY DISRUPTIONS. IN THE SAME WAY, THEY CANNOT PARCEL OUT TO ONE ANOTHER THE NATION'S REMAINING INDEPENDENT JOBBERS WHO ARE SO OFTEN LEFT TO COPE WITH LOGISTICS PROBLEMS. THE PRESIDENT OF THE UNITED STATES COULD EASILY BRING ABOUT A TEMPORARY SUSPENSION OF THE ANTITRUST LAWS, SO AS TO PERMIT A NATIONAL CONFERENCE OF THE ENTIRE PETROLEUM PRODUCTS DISTRIBUTION SYSTEM. SUCH A CONCLAVE, ATTENDED BY ALL INTERESTED ELEMENTS OF GOVERNMENT AND THE MEDIA, COULD BRING TO LIGHT PRESENT PROBLEMS THAT RESULT MOSTLY FROM INHIBITED COMMUNICATIONS. IT MIGHT ALSO BRING TO LIGHT NEW THINKING TO COPE WITH THE PRESENT INTENSIVE EVOLUTIONARY FORCES. IT WOULD CERTAINLY BRING TO LIGHT THE BASIC GOOD WILL AND INDIVIDUAL AND CORPORATE RESPONSIBILITY THAT I THINK ARE GROWINGLY CHARACTERISTIC OF THE WHOLE OIL INDUSTRY.

U.S. GASOLINE PRICE SUMMARY
ALL GRADES AND FULL + SELF SERVICE
RETAIL AND WHOLESALE AVERAGES



SOURCE: LUNDBERG SURVEY, INC.
P.O.BOX 3998, NO. HOLLYWOOD, CA 91608
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LUNDBERG LETTER

Weekly Vital Statistics and
Analysis in Oil Marketing

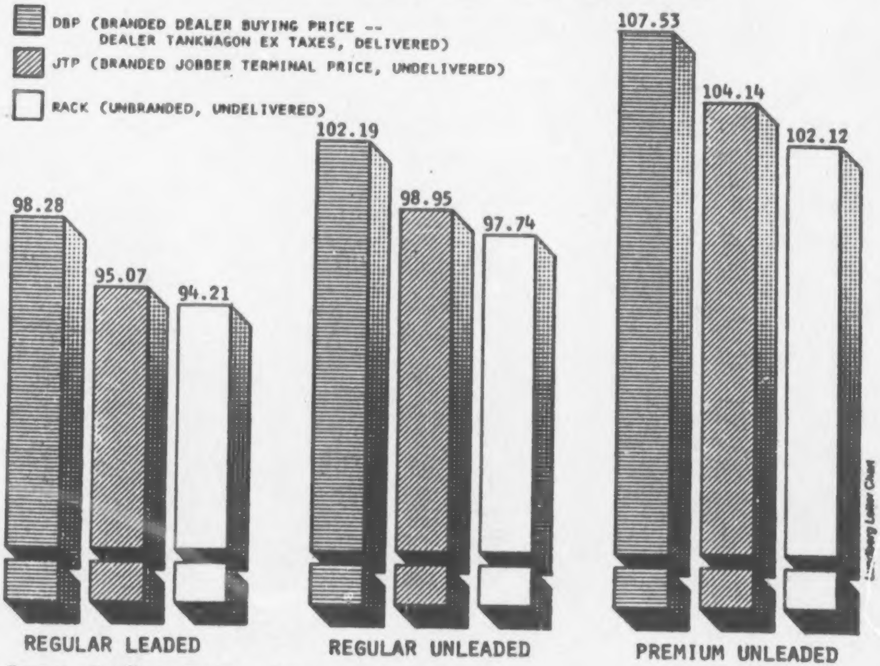
Published Fridays

VOLUME X NUMBER 3
NOVEMBER 19, 1982

Changing Wholesale Gasoline Price Structures

THE NEW LOOK IN JOBBER MARGINS

THREE WHOLESALE GASOLINE PRICE LEVELS: DBP, JTP AND RACK
U.S. AVERAGES, CENTS GAL., NOVEMBER 16, 1982



Source: Lundberg Survey, Inc.

WHAT ARE JOBBER MARGINS TODAY? Wholesale gasoline pricing is in a state of shakeout, with the traditional jobber discount (off dealer tankwagon) and hauling allowances drying up. Will the difference between the jobber terminal price, and the price branded dealers pay for delivered product, enable jobbers to continue supplying rural, commercial, agricultural, and service station accounts where alternative sources of supply exist?

Trilby Lundberg, Editor. Dan Lundberg, Publisher
Contributing Editors, John Ayling, Mark Emond, Jan C. Lundberg, Harold I. Ash, Statistics. Chu Shaw, Graphics. Netta B. Shelton, Business Manager. Craig P. Hardin, Production

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LUNDBERG LETTER

Weekly Vital Statistics and
Analysis in Oil Marketing

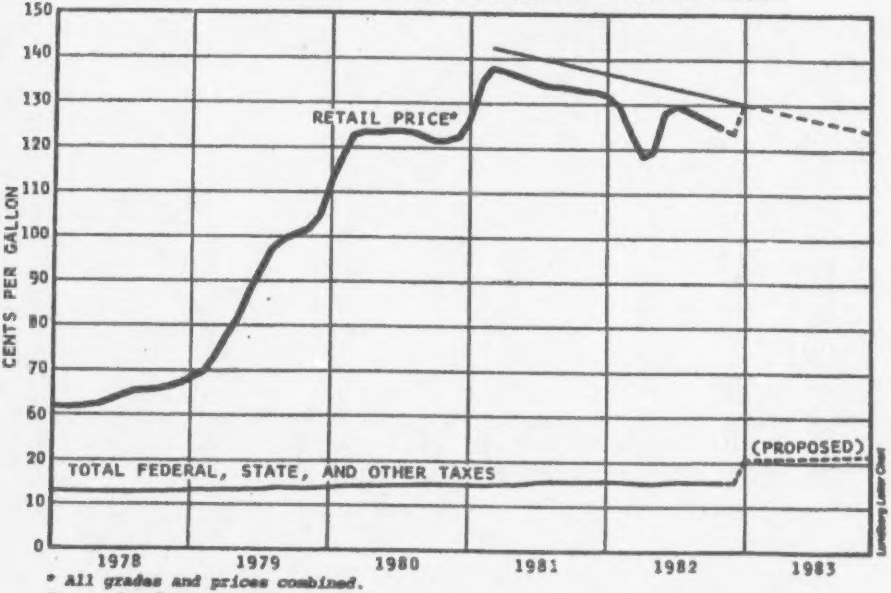
Published Fridays

VOLUME X NUMBER 4
NOVEMBER 26, 1982

Growing Like Topsy

The Truth About the Proposed Gasoline Tax Increase

U.S. RETAIL GASOLINE PRICES AND TAXES BY MONTH, 1978-1982



** All grades and prices combined.*
Source: Lundberg Survey.

IF A PROPOSED 5¢ gal. federal gasoline tax increase went into effect in January 1983, retail prices and taxes would rise as shown by the dashed lines. Gasoline prices are soft and on a downtrend, indicated by the sloped straight line. If this trend continued, the tax increase would be offset by the end of the year.

Trilby Lundberg, Editor. Dan Lundberg, Publisher.
Contributing Editors, John Ayling, Mark Emond, Jan C. Lundberg. Harold I. Ash, Statistics. Chiu Shaw, Graphics. Nella B. Shelton, Business Manager. Craig P. Hardin, Production.

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REQUEST

Enclosure 2

p. 8; Lundberg Letter, December 31, 1982

Attention: DOE-EIA watchers:

One of the purposes of the Subcommittee on Energy, Environment, and Safety Issues Affecting Small Business, is to determine whether the DOE is furnishing data "really needed" by the industry, as Chairman Berkley Bedell put it on the opening day of his hearings, December 1.

At that approximate time, Chairman Bedell would likely not had opportunity to see DOE's "Monthly Energy Review," for November. He may yet avail himself of it and publish its page 82, and startle Congress. If he does, the greenest page boy could be catapulted into an Energy Information Administration corner office.

The data below are from page 82. Years 1974-1981 not included.

PRICE
U.S. City Average Retail Prices for Motor Gasoline.

		Leaded Regular	Unleaded Regular	Leaded Premium	Average for All Types	
						*
1982	January	128.5	135.8	145.6	134.1	
	February	126.0	133.4	143.8	131.8	
	March	120.6	128.4	140.7	126.8	
	April	114.8	122.5	136.8	121.0	
	May	116.6	123.7	137.9	122.4	
	June	124.2	130.9	140.8	129.6	
	July	126.3	133.1	145.0	131.8	
	August	125.4	132.3	145.8	131.0	
	September	123.6	130.8	144.1	129.5	**

DOE-EIA/BLS

The above data from DOE's Review reveal a glaring error, possibly due to inadequate base-touching between DOE and the Bureau of Labor Statistics, inasmuch as EIA footnotes BLS as having introduced weighting changes.

But when EIA says "All Types" (*), one sees no Unleaded Premium, now 10.6% of sales. One sees, instead, Leaded Premium, a skinny 0.9%.

The 129.5 (**) is therefore a non sequitor, if not also spurious.

The Bedell Subcommittee is aware that the DOE subscribes to Lundberg bi-weekly weighted data for each of the 4 grades, which compounds the oversight.

The EIA has issued this price series for several months. It is questionable whether BLS has protested. Has the coordinated output of these "Sister Agencies" cross-pollenated other official data banks?

DL

Enclosure 3

1) Mr. Lundberg alleges that DOE prefers not to use private sector data

Quite to the contrary, the DOE, specifically EIA, routinely employs private sector data to augment government data. The EIA currently subscribes to Lundberg's bi-monthly motor gasoline price and margin data. EIA also subscribes to Lundberg's alternative fuels data. These statistics are employed by EIA analysts to assess the effect of price changes on retail dealerships. The EIA, as Mr. Lundberg mentioned, also uses other trade publications (Platt's Oilgram Price Report, Oil Buyers Guide, etc.) to track current price trends in the marketplace for all products. However, it should be noted that many of the widely quoted trade prices are posted prices and are based on a limited number of observations; therefore, they do not adequately reflect actual market activity, as do the more geographically representative survey data collected by EIA. Further, the EIA has observed that often there is very little market activity at these posted prices, as they are only offers and not transaction prices.

2) Mr. Lundberg stated that EIA uses API stock and inventory data

The EIA recognizes the stock and inventory data collected by the American Petroleum Institute (API). However, these statistics are not currently used by the EIA in any of its publications of stock and inventory data. In 1979, the EIA published weekly stocks and inventory statistics obtained by the API. In 1980, EIA began using exclusively its own data collected from a sample survey of refiners, bulk terminal operators, crude oil stock holders, importers, and a universe of product pipeline companies. The API recognizes the accuracy and validity of the EIA data in that they benchmark or recalibrate to EIA's monthly data, each month, for use in the development of their weekly estimates.

3) Mr. Lundberg stated that DOE currently subscribes to the Lundberg Share of Market Reports

During the early years of petroleum regulation, the Cost of Living Council (COLC) utilized the Lundberg Share of Market gasoline data. In addition to these data, the Federal Energy Administration (FEA) later procured a very comprehensive price package from the Lundberg Survey. The COLC also implemented its own Market Shares data collection system in 1972, and later expanded the survey when the Emergency Petroleum Allocation Act of 1973 (EPAA) was enacted. Due to the mandates set forth in the EPAA, the COLC, and later the FEA, depended exclusively on certified respondent data reported on its own Market Shares reports. These reports were discontinued after September 1981.

While the DOE no longer subscribes to the Lundberg Share of the Market Report, the EIA and the Office of Emergency Preparedness are evaluating examples of the statistics provided by Lundberg at no extra cost to the existing $80,000 contract with the Lundberg firm. As a result of that evaluation, several reservations exist:

- First, the monthly State and regional data availability are erratic. This is probably due to its dependence on State motor vehicle fuels tax records which are processed on different schedules by each State.
- Second, the methodology used to produce Lundberg's statistics has never been described in detail. This is particularly relevant because motor fuel taxes are remitted by suppliers to the States under procedures that vary from State to State; therefore,the tax records must be adjusted if the statistics are to accurately represent monthly sales to consumers at the company/State level of disaggregation.
- Although the Lundberg Market Share statistics seem to be timely (subject to their irregular submission, as noted above), the validity of month-to-month changes is questionable. Lundberg's monthly statistics reflect the volumes on which taxes are paid in a month; actual sales may have been made in a different month. This is particularly troublesome statistically, if the payment procedures vary among companies dealing in a State.
- Lundberg's statistics cover highway motor fuels, which constitute only about half the volume of petroleum products consumed in the U.S. During the last year, EIA hosted a series of meetings, workshops, and a public hearing on issues related to petroleum products statistics. Representatives from the petroleum industry, the American Petroleum Institute, the National Governors' Association, Congressional committees and State energy offices participated in those discussions. The consensus of opinion was that private sector data, while useful, is not in itself sufficiently detailed and verifiable to satisfy the mandates imposed by law on the Energy Information Administration. Further, it was considered imperative that a common, documented, methodology be applied to all petroleum products so that all sales related statistics are derived in a compatible fashion.

4) Mr. Lundberg implied that EIA omits data from importers and blenders and miscalculated motor gasoline demand

The EIA has always collected data from importers. Information from blenders was collected beginning in January 1981. These data are published in the EIA publications, Weekly Petroleum Status Report and the Petroleum Supply Monthly. Mr. Lundberg indicated that the EIA data showed motor gasoline demand increasing in June 1982 while the Lundberg taxable sales data was decreasing. The EIA must point out that monthly calculated demand does not purport to equal sales. Motor gasoline demand (or "Motor Gasoline Supplied for Domestic Use", as it is labeled in EIA publications) is a number calculated by summing production and imports and subtracting exports and changes in primary stocks. The number represents the quantity of motor gasoline which disappeared from primary supply during the time period covered. The product has been moved from primary storage to supply jobbers and dealers. It may or may not have been sold to the ultimate consumer. Sales would equal product supplied only when stocks held by all middlemen remained constant. Because motor gasoline is a seasonal product, demand (or product supplied) usually leads sales by several months as jobbers and dealers build their stocks for the driving season.

Petroleum supply and disposition statistics published by both the EIA and the American Petroleum Institute (API) use the same method to determine product demand numbers. It is interesting to note that the API data also showed motor gasoline demand increasing in June 1982.

5) Mr. Lundberg implied that only private sector data reflect distributor problems as related to dealers and jobbers

Mr. Lundberg provided for Chairman Bedell's Subcommittee a copy of a recent Lundberg Letter publication that addressed jobber "margins." The letter observed that major refiners have recently changed the wholesale pricing structure by eliminating certain discounts for independent jobbers. Discounts at terminals, and to prices paid for gasoline delivered to jobbers' distribution centers have been reduced or eliminated by certain refiner/suppliers. Consequently, the price margin between wholesale gasoline and the retail dealers' delivered price (i.e., the dealer tankwagon--DTW), on which the jobbers depend for their livelihood, has narrowed. Although the Lundberg Letter provided no historic perspective, it did observe that this margin, for branded regular leaded gasoline, had narrowed to about 3.2 cents per gallon.

In fact, the trend is obvious in national level data collected by EIA. Specifically, during January-October 1982, the unleaded gasoline wholesale price minus DTW price (margin) narrowed from 8.5 cents/gallon in January to 4.0 cents per gallon in October. The drop in major refiners' price margins was proportionately more significant in moving from 6.0 cents/gallon down to 2.7 cents. The leaded regular gasoline margin decreased from 7.0 to 2.2 cents/gallon for all suppliers; major refiners' margins dropped from 5.2 to 1.1 cents per gallon. Thus, currently available EIA data not only show the trend, but are adequate to differentiate readily among classes of suppliers. Additionally, the methodology is simple and documented.

Enclosure 4

JAN 10 1983

Mr. Dan Lundberg
P. O. Box 3996
North Hollywood, California 91609

Dear Mr. Lundberg:

I was appalled to pick up the December 31 issue of your publication "Lundberg Letter" and see your complete lack of familiarity with the major gasoline price series which are published in the monthly Bureau of Labor Statistics News, and secondarily in the Energy Information Administration's (EIA) Monthly Energy Review (MER).

The four retail gasoline price series published in the MER (leaded regular, unleaded regular, leaded premium, and average all types), which you denounce as containing glaring errors, are the U. S. City Averages exactly as published by the Bureau of Labor Statistics (BLS). As is clearly stated in the footnote on page 82 of the November MER, the all-types average includes prices for not only the three grades shown individually but also unleaded premium and gasohol. The fact that other types of gasoline are included in the all-types average is also footnoted each month in the BLS News. Those who deal professionally with retail gasoline prices tend to be aware of such factors; the footnotes, however, are always included for the benefit of those who have apparently just discovered the data which EIA has published for several years.

Although the audience for the Lundberg Letter is limited, it may include some people who would believe your false and misleading implications of blatant errors and inadequate coordination by EIA. I am sure these implications were not made with malicious intent, but only from overzealous misinterpretation and inadequate knowledge. I would appreciate, however, your reaching the same audience with a correction, lest any unfounded mistrust of the data persist.

We, in turn, will attempt to make the footnote even clearer so that others who initially stumble upon the price data will not make your same mistakes.

Sincerely,

/signed/
Jimmie L. Petersen

Jimmie L. Petersen
Director
Office of Oil and Gas
Energy Information Administration

APPENDIX C.—REPORT OF THE PENNSYLVANIA GOVERNOR'S ENERGY COUNCIL

GASOLINE MARKETING:

TRENDS AND CHOICES

By the staff of the Governor's Energy Council

September 24, 1982

This report was prepared by the staff of the Governor's Energy Council. Those directly involved in its preparation include:

Rodney Boyer
John Buffington
Mark Kennet
Joseph Miller
Dennis Poluka
Robert Shinn
Tina Walborn
Wendy Warner

The Lundberg Letter also provided extensive information for this report.

INTRODUCTION

A decline in the number of retail gasoline outlets operated by independent dealers and allegations that oil refiners are responsible for the decline through unfair practices have caused legislation addressing retail gasoline marketing to be introduced in the Pennsylvania General Assembly (SB 1266, SB 539, HB 365, and HB 429). Included among the many provisions of these bills is a provision which would prohibit refiners from operating new or existing retail gasoline outlets. Four states (Maryland, Connecticut, Delaware, and Virginia) and the District of Columbia have enacted similar legislation.

This report was prepared at the request of the Chairman of the Governor's Energy Council, Lieutenant Governor William W. Scranton III; the Chairman of the Senate Committee on Environmental Resources and Energy, D. Michael Fisher; the prime sponsor of Senate Bill 1266, F. Joseph Loeper; and the Pennsylvania-Delaware Service Station Dealers Association. It identifies trends in retail gasoline marketing, the results of an investigation of complaints by independent dealers, and the choices available for responding to those complaints. The report contains no specific recommendations on pending legislation.

Authority for the Council to undertake this kind of study is provided in Executive Order 1979-7. It directs the Governor's Energy Council to

> "assist the governor, other state agencies and the private sector in the study and review of all energy plans, policies and programs and to aid in the...analysis of existing programs and the development and implementation of new policies and programs..."

The Council staff also has been responsible historically for administering Pennsylvania's fuel allocation program. The program required extensive interaction with all components of the gasoline delivery and marketing system.

This study was complicated by a number of factors:

1. The Governor's Energy Council has no statutory authority to regularly collect reliable information on retail gasoline prices, volumes supplied at specific prices, or on retail marketing practices;
2. Available information is limited. The Department of Energy information on retail marketing is available only through the Freedom of Information

Office. Response time for these requests was three to four weeks. Since these were not open files a number of follow-up requests had to be made;

3. Pennsylvania-specific data, available through DOE, has limited utility. No information was collected on the number of or volumes of gasoline supplied to bulk purchasers or jobber operations, the so-called "indirect market". Data is only available through December of 1980. Information was only collected by DOE through the expiration of price controls.

4. Only two states have enacted legislation totally prohibiting refiner operation of retail gasoline outlets. While the effect of the legislation on these states has been studied, the study methodologies are open to question.

THE STRUCTURE OF GASOLINE RETAIL MARKETING

Gasoline is refined and brought to retail markets through a complex and dynamic process (See Appendix I for a detailed breakdown of the gasoline distribution network). For the purpose of classifying each actor in the marketplace a number of conventions are widely used: refiners, jobbers, and retailers.

The Department of Energy classifies refiners into three groups: large integrated, large independent, and small independent. Large integrated refiners own or control more than 30 percent of the crude oil used in their refineries and have a refining capacity of more than 175,000 barrels per day. Refiners in this category include most major oil companies. Their names are listed in Appendix II.

Independent refiners own or control less than 30 percent of the crude oil used in their refineries and are classified as "large" or "small" based on their refining capacity (i.e., greater or less than 175,000 barrels per day). In Pennsylvania, the large independent refiners include Amerada Hess Corp., Sohio, and Ashland Oil, Inc. Examples of small independent refiners include (but are not limited to) Quaker State and United Refining.

Jobbers (wholesale purchaser/resellers) purchase and take title to bulk quantities of gasoline from refiner terminals at rates known as rack prices. These prices have historically been lower than dealer wholesale (the dealer tankwagon) price, which typically includes the cost of trucking small quantities from the "rack" (the central storage area) to the dealer's station. Jobbers supply branded and unbranded gasoline to lessee or open retail outlets on behalf of refiners or may market the gasoline directly through their own retail outlets.

Retail outlets sell branded or unbranded gasoline and may be operated by the refiner, jobber, independent retailer, or commission dealer.

Retail outlets which are operated by salaried refiner personnel are classified as refiner or "company" stations. To eliminate confusion, this report will use the convention used by the DOE Title III report, "company store".

Lessee stations are operated by independent dealers who lease the building and equipment from the refiner from which they purchase gasoline. Almost all lessee dealers are restricted, under the terms of their lease, to sell only the branded products of their supplier.

Open dealers own their stations and equipment and are not necessarily contractually bound to purchase gasoline from a particular refiner or jobber.

Commission dealers or consignees (who constitute only a small part of Pennsylvania retailing) distribute gasoline for a refiner for a fee usually based on the volume of product. The consignee never assumes title to the product he distributes.

NATIONAL TRENDS IN RETAIL MARKETING

The structure of national gasoline marketing has undergone substantial change over the last decade:

1) The number of lessee and open dealer stations and, more recently, refiner-operated stations has declined. (Appendix III)

2) Volumes of gasoline sold by company stores and jobbers have increased while volumes sold by refiner supplied dealers have declined. (Appendix IV)

3) In most states lessee dealers have lost 8 to 20 percent of their market share to outlets operated by refiners and jobbers. (Appendix V)

4) Jobbers have become the principal gasoline marketers. "The Lundberg Letter" reports that in November, 1980, the jobber share of the gasoline market reached 51.3 percent. Jobbers held only 35 percent of the market in 1972. (Appendix VI)

5) The average volume of gasoline sold by a station has increased as the absolute number of stations supplied directly by refiners has decreased.[1]

6) Private brand, independent marketers, and jobbers have increased the number of retail stations they operated.[2]

7) Refiners have operated and marketed gasoline through high volume stations under secondary brand names in increasing numbers.[3]

8) Convenience grocery stores which also sell gasoline have steadily increased their share of total retail sales of gasoline.[4]

9) Refiners have experimented with a variety of techniques (e.g. eliminating or changing credit card policy, providing volume incentive rebates, etc.) to increase their market shares.

MARKETING TRENDS IN PENNSYLVANIA

Information on marketing trends in Pennsylvania (listed in Appendices VIII-XI) was obtained from the U.S. Department of Energy, for 1972 through 1980. It includes the number of retail outlets and volume of gasoline supplied directly by refiners and by type of retail outlet and by size and type of refiner. It does not include the volume of gasoline delivered to or sold by jobbers (wholesale-resellers) or the number of stations controlled or supplied directly by them.

This information shows that:

1) Company stores have generally expanded their numbers and share of total gasoline sales in Pennsylvania. In 1972, refiners operated 786 retail outlets (7 percent of the stations directly supplied) and sold 11.4 percent of total Pennsylvania gasoline sales. In 1980, refiners operated 861 retail outlets (13.9 percent of the stations directly supplied) and sold 18.9 percent of total Pennsylvania gasoline sales. The distribution of refiner gains in numbers and in market share was not uniform. For example:

    a. Company stores operated by large integrated refiners experienced the least amount of growth in total volume and market share among the refiner group. The number of stations and volumes sold by the company stores of large integrated refiners decreased from 1977 to 1980.

   b. Company stores operated by small independent refiners significantly increased their number of outlets from 1972 to 1980.

   c. Both large and small independent refiners steadily increased their market share over the period and accounted for considerably larger total market shares in 1980 when compared to integrated refiners (6.8 percent and 8.0 percent, respectively, vs. 4.1 percent).

   d. Company stores operated by large integrated refiners increased the average station sales volume from 1972 to 1977, but decreased from 1977 to 1980. Both large and small independent refiner operations steadily increased average volumes per station from 1972 to 1980.

2) Open dealers as a whole showed the greatest decrease in numbers.

3) All categories of lessee dealers experienced steady, large, annual declines both in their numbers and in their market share. In 1972, refiner-supplied lessees operated 5,250 retail stations (46.8 percent of the stations directly supplied) and sold 38.4 percent of total Pennsylvania gasoline sales. In 1980, refiner-supplied lessees operated 2,633 retail stations (42.6 percent of the stations directly supplied) and sold 27.1 percent of total Pennsylvania gasoline sales.

4) Total numbers of stations and volumes handled by all categories of directly supplied (as opposed to jobber supplied) stations have declined since 1972.

   a. The total number of directly supplied stations has declined by 45 percent since 1972.

   b. The total 1980 volume supplied by these stations has decreased by one quarter billion gallons compared to the volume supplied in 1972, while total gasoline sales in Pennsylvania have declined by only 180 million gallons.

   c. Since the number of stations supplied by jobbers is not reported, it would be incorrect to assume that the total number of stations in Pennsylvania has declined at the same rate as directly-supplied stations.

5) Gasoline volumes and market shares sold by jobbers or sold to bulk purchasers appears to have steadily increased.

a. While absolute figures are not available, directly supplied outlets (listed above) have declined from 63.9 percent to 59 percent of Pennsylvania's market.

b. The remaining 41 percent of the 1980 market is composed of jobber and bulk purchaser outlets.

It is hard to generalize about the Pennsylvania market since the companies vary widely in their marketing philosophies. However, marketing can be significantly affected by the actions of dominant companies. Appendix XII indicates that of the top eleven brands sold in Pennsylvania, Arco is by far the dominant marketer. Arco has a 21 percent market share while the other major marketers range from 3-10 percent.

PROBLEMS OF THE INDEPENDENT RETAIL MARKETER

A number of reasons have been advanced by others for the decline in the number and the market share of independent retailers:

1. Petroleum Price and Allocation Regulations -Federal price and allocation regulations caused severe market distortions which worked to the advantage of large refiner-operated stations and self-service stations which had high base period volumes. According to an Energy Department study:

> "While the price regulations offer dealers the greatest flexibility among industry participants, especially in times of short supply (fixed 16.1 cent per gallon markup), there is no other group in the industry that is as adversely affected by the DOE allocation system. Refiners, jobbers, and even unbranded chain retailers can increase their allocation base through the upward certification process, even when a "willing" prime supplier cannot be located. Dealers cannot.
>
> The allocation regulations adversely affect an individual who operates [at] only one location. Increases in an allocation of an existing outlet are nearly impossible. As we have seen ... dealer sales volumes have grown among the major refiners only to the extent that other dealers have left the industry.

> To the extent that the economics of gasoline marketing have changed from low volume outlets to higher volume outlets, dealers are put in a precarious economic position. They do not have the opportunity to demonstrate that they can effectively manage higher volume outlets. The refiner is limited in adding volume to an existing outlet because of the allocation regulations. Typically, the refiner can only offer the dealer an additional amount of gasoline above his allocation when a surplus product is declared. Moreover, the refiner may be required to supply other marketers because of the upward certification process. In short, the regulations make it difficult for an individual dealer to increase his sales volume, even in cases where the refiner is willing to supply additional volumes and the dealer is able to sell them at a profit."5

The pricing and allocation regulations also played a large role in the composition of the retail market during the 1979 petroleum shortage when, according to one observer, 17,424 dealers went out of business across the nation.6

2. The vertical integration of the petroleum industry allows the refiner, if it wishes, to "subsidize" portions of his retail operation (i.e., operates at a loss) from profits from other levels of the business.7

3. Changing Public Preferences - The consumer has demonstrated a preference for lower cost self-service or "gas and go's". Nationwide, self-service trade is estimated to account for 70 percent of the gasoline sold.

In addition, an increasing share of consumers' automobile maintenance needs are being taken care of by a variety of specialty auto service centers or repair shops offered by chain stores. The variety of services offered at these types of centers rival traditional stations, and are competitively priced.

4. Maintenance Agreements - Historically, maintenance agreements with refiners included the painting and repair of buildings, maintenance of signs, service bays, compressors, tanks, pumps, and nozzles. Elimination of these responsibilities, in whole or in part, by the refiners places additional financial obligations on the lessee dealer and can represent a substantial increase in a lessee dealer's monthly expenditures.

5. Unreasonable rent increases based on land value or past volume in the face of declining sales;

6. Unreasonable contractual obligations requiring dealers to sell company tires, batteries, and accessories; and

7. Elimination of credit cards.

RELATED FEDERAL LEGISLATION

1. Antitrust

Three related federal antitrust statutes apply to competition in the gasoline industry:

A) Federal Trade Commission legislation (15 U.S.C. 45) authorizes the investigation of complaints against unfair competition. Deceptive acts or unfair practices discovered by the Commission will result in mandates to cease and desist.

B) The Robinson-Patman Discrimination Act (15 U.S.C. 13) prohibits discrimination in price between different purchasers of the same product. However, it has no direct application to the oil company practice of selling gasoline at retail for less than the independent retailer's wholesale price, as the prohibition applies only to discrimination between purchasers at the same level of distribution and is restricted to transactions across state lines.

C) The Sherman Act (15 U.S.C. 2) prohibits monopolization of trade or commerce and combining or conspiracy to monopolize. An oil company setting retail prices below the wholesale price to competing independent retailers could conceivably be held to be engaged in "predatory pricing" only if there is a clear attempt to monopolize a market.

2. Petroleum Marketing Practices Act (PMPA)

In June 1978, Congress enacted the Petroleum Marketing Practices Act which addressed a number of problems that were occurring between lessee dealers and their landlord/suppliers. Prior to the passage of this bill, refiners were able to enter into short-term leases with dealers with 30 day cancellation clauses. Section 102 provides some protection for the lessee dealer by providing that "no franchisor engaged in the sale, consignment or distribution of motor fuel in commerce may -

1) terminate any franchise (entered into or renewed on or after the date of enactment of this Act) prior to the conclusion of the term, or the expiration date, stated in the franchise; or

2) fail to renew any franchise relationship (without regard to the date on which the relevant franchise was entered into or renewed)."

The Act provides the terms and conditions under which termination and nonrenewal can be executed including:

A. Termination

1. Non compliance with franchise agreement
2. Lack of good faith efforts
3. Mutual agreement to terminate the franchise
4. Withdrawal from the market area
5. Other events such as criminal misconduct, bankruptcy, condemation of property, loss of right to grant use of trademark, etc.

B. Non renewal

1. Failure to agree on changes or additions to franchise
2. Customer complaint
3. Unsafe or unhealthful operation
4. Operation of franchise is uneconomical

The Act also:

A) requires 90 day advance notification of termination or non-renewal of a lease,

B) grants a lessee the first refusal of any offer to purchase the station,

C) requires 180 days notice if termination or non-renewal is based upon a determination of the refiner to withdraw from the marketing area, and

D) authorizes the lessee to take civil actions against a refiner who violated requirements of the law.

3. Case Law Review (PMPA)

The Petroleum Marketing Practices Act prohibits the termination of the lease of an independent retailer except on certain specifically enumerated grounds, which generally have to do with dealer misconduct. 15 U.S.C. 2802. If the company chooses to sell the location, it must give the dealer a right of first refusal. When a company does terminate a lease for cause, it is required to comply with certain notice requirements. 15 U.S.C. 2804.

Failure of the company and the retailer to agree on new lease terms is a ground for termination, provided that the new terms are "the result of determinations made by the franchisor in good faith and in the normal course of business" and "such failure is not the result of the franchisor's insistence upon such changes or additions for the purpose of preventing the renewal of the franchise relationship."

The federal courts have dealt with the question of whether refusal of a dealer to agree to a large increase in rent is proper grounds for termination in several cases. The lessee dealer won in *Thompson v. Kerr-McGee*, 660 F. 2d 1380 (10th Cir. 1981), *cert. den.*, 102 S.Ct. 1716 (1982), primarily based on the failure of the company to comply strictly with the termination notice requirements. The court did suggest, however, that the company's bargaining possibly was not in good faith was relevant to its decision. Similarly, the lessee dealer won in *Davy v. Murphy Oil Corp.*, 488 F. Supp. 1013 (W.D. Mich. 1980) largely on the notice issue, although a rent increase caused the controversy. In *Sexe v. Husky Oil Co.*, 475 F. Supp. 135 (D. Mont. 1979), the lessee dealer won because the court found the company's rental policy arbitrary and discriminatory.

The question in failure to agree cases is not the reasonableness of the proposed lease terms, but the company's good faith and subjective intent. *Bellmore v. Mobil*, 524 F. Supp. 850 (2d Cir. 1981). The burden is on the dealer to prove that the company failed to bargain in good faith. *Kesselman v. Gulf*, 479 F. Supp. 800 (E.D. Pa. 1979). The actual amount of a rent increase seems not to be very significant by itself; in *Munno v. Amoco*, 488 F. Supp. 1114 (D. Conn. 1980), the dealer lost despite a 200-300 percent increase. Ultimately, the company will win in a rent dispute if it arrived at an increase in good faith, in the normal course of business, and did not impose the increase for the purpose of preventing lease renewal. *Pearman v. Texaco*, 480 F. Supp. 767 (W.D. Mo. 1979).

It appears, then, that while demands for rent increases reported by Pennsylvania retailers exceed inflation, in some cases dramatically, the Petroleum Marketing Practices Act is unlikely to provide much protection.

4. Title III Study

Title III of the Petroleum Marketing Practices Act required DOE to undertake a detailed study of the effects of trends favorable to refiner-operated retail outlets and to recommend legislative remedies, if necessary. The final report of Title III was published in January 1981.

The study examined data collected at retail outlets in five Standard Metropolitan Statistical Areas for the year 1978 from documents subpoenaed from nine integrated oil companies. The report concluded that the information revealed no evidence of subsidization at the retail level as part of a predatory campaign directed against independent dealers. The report suggested instead that the decline of independent dealers was attributable to other causes including changed consumer preferences, altered market conditions, and DOE price and allocation regulations.

No legislative recommendations were made to Congress by the Title III study.

5. Pending Federal Legislation

The most recent federal bills to address retail gasoline marketing include HR 1362 (Bedell, Iowa) and S. 326 (Metzenbaum, Ohio). If enacted, HR 1362 would

A) prohibit large (over 175,000 bbl/day refining capacity) refiners from operating retail gasoline stations;

B) establish limits on the amount of direct retail sales of gasoline that could be made by any refiner;

C) establish a daily wholesale transfer price for motor fuel and require a supplier to sell only at that price, including sales to independent wholesale purchasers; and

D) permit the Small Business Administration to provide loan guarantees for the acquisition of service stations.

Hearings were held on March 31, 1981 by the House Committee on Small Business. The committee voted to table the bill on March 16, 1982.

S. 326 is essentially the same as HR 1362, but does not limit the amount of direct retail sales of gasoline by refiners. Hearings were held on the Senate Bill on October 31, 1981 before the Judiciary Committee. The bill was reported out on December 15, 1981 and is now pending for scheduling on the Senate Calendar.

PENNSYLVANIA STATE LEGISLATION

1. Existing Statutes

A. Gasoline, Petroleum Products, and Motor Vehicle Accessories Act

The Gasoline, Petroleum Products and Motor Vehicle Assessories Act was enacted in 1975 specifically to provide protection to independent gasoline dealers and preserve competition in the retail gasoline industry.

The legislation:

1) required 90 day advance notification of a supplier's intent to terminate a franchise;

2) provided that leases cannot be terminated because of failure by dealers to meet sales quotas, to sell products at supplier suggested prices or to operate at unprofitable hours;

3) provided specific grounds for lessee dealer terminations; and

4) allowed lessee dealers to bring an action against a lessor supplier for violation of the act.

B. Federal Preemption

This legislation was enacted prior to the federal Petroleum Marketing Practices Act. Section 106 (a) of the PMPA states that

> "...no state... may adopt, enforce, or continue in effect any provision of any law or regulation (including any remedy or penalty applicable to any violation thereof) with respect to termination (or the furnishing of notification with respect thereto) of any such franchise or to the nonrenewal (or the furnishing of notification with respect thereto) of any such franchise relationship unless such provision of such law or regulation is the same as the applicable provision of this title."

Thus all provisions of the state legislation about termination and nonrenewal (and notice of both) that are not the same as the federal statute are superseded and no longer have any legal effect. Also superseded were the enforcement remedies, including legal actions in state court.

It must be noted that the preemption language of PMPA 106 is prospective as well. Pennsylvania is prevented from adopting future laws or regulations about the termination or nonrenewal of service station franchise agreements that are not identical to the PMPA. Exempt from this prohibition, however, would be state regulation about the formation and operation of such agreements, since the federal legislation covers only their termination and nonrenewal.

Provisions of laws which regulate pricing have been tested in court. On February 22, 1982, the U.S. Supreme Court in Tully v. Mobil Oil Corporation remanded an earler decision of the Temporary Emergency Court of Appeals concerning state federal preemption. The appelles were 10 oil companies who were subject to a New York gross receipts tax law which included a non-pass through provision. The companies instituted suit to enjoin the anti-pass through provision, claiming that it was in conflict with and therefore preempted by federal price control authority under the Emergency Petroleum Allocation Act 15 U.S.C. 751 *et seq.* (1976).

This position was agreed to by District Court in 1980. The case was appealed to the TECA which affirmed the lower court decision but held that the federal statute would expire in 1981 and that expiration of the Act "will signal the end of Federal concern in this area." 653 F2d 497 Temp. Emerg. Ct. App. (1981).

The Supreme Court remanded the case to TECA for reconsideration in light of the expiration of federal price control authority. The Supreme Court stated that "the normal rule in a civil case is that we judge it in accordance with the law as it exists at the time of our decision." Kremens v. Bartley, 431 U.S. 119, 129 (1977), Fusari v. Steinberg, 419 U.S. 37a, (1975). And further found "The expiration date for the Federal statute has come and gone; the only barrier to the enforcement of the anti-pass through provision no longer exists."

C. The Pennsylvania Unfair Sales Act

The Pennsylvania Unfair Sales Act (1941, P.L. 900) provides general guidelines concerning unfair trade practices by sellers. Specifically, the act states "...advertisement, offer to sell or sale of any merchandise, either by retailers or wholesalers, at less than cost as defined in this act with the intent of unfairly diverting trade from or otherwise injuring a competitor or with the result of deceiving any purchaser or prospective purchaser, substantially lessening competition, unreasonably restraining trade or tending to create a monopoly in any line of commerce is an unfair method of competition contrary to public policy and in contravention of the policy of this act."

Cost is defined as invoice cost or the replacement cost, whichever is lower, less all trade discounts but to include freight charges and "markup to cover the cost of doing business which, in the absence of proof of a lesser cost is to be not less than 4 percent of the total cost at retail outlet."

Excepted sales include clearance sales, sales of perishable merchandise which must be sold promptly, sales of imperfect or damaged merchandise, final liquidation of a business merchandise sold for charitable purposes, sales to government agencies, sales made in good faith to meet competition, sales made under the direction of a court, and sales of tools, equipment, and materials used by employees in their trade and business which are sold to employees of the seller.

Penalties are provided for persons violating the act including fines and imprisonment.

2. Pending Pennsylvania State Legislation

A number of bills have been introduced in the 1981-82 session of the Pennsylvania General Assembly. The following table summarizes their major provisions:

GASOLINE MARKETING PROVISIONS OF BILLS* PENDING BEFORE THE PENNSYLVANIA GENERAL ASSEMBLY

Provision	H.B. 365	H.B. 429	S.B 1266	S.B. 539
Prohibits the operation of a retail outlet by a manufacturer or refiner of petroleum.	X	X	X	X
Prohibits the opening of a retail outlet by a refiner.	X	X	X	X
Requires gasoline suppliers to extend voluntary allowances uniformly to all retail outlets.	X	X	X	X
Requires gasoline suppliers to apportion fuels uniformly during shortages.	X	X	X	X
Requires distributors to wholesale gasoline to non-controlled outlets at four cents per gallon less than price to controlled outlets.	X	X	X	
Prohibits distributor from setting prices for any products sold.	X	X	X	
Prohibits a supplier from charging a minimum monthly rental based on a certain volume if less than that volume is made available that month.	X	X	X	
Prohibits distributor from requiring dealer participation in promotional activities.	X	X	X	
Requires ninety day notice from distributor for cancellation.	X	X	X	
Distributor disclosure of contractual terms and past history of station.	X	X	X	

GASOLINE MARKETING PROVISIONS (cont.)

Provision	H.B. 365	H.B. 429	S.B. 1266	S.B. 539
Dealer right to cancel marketing agreements within seven days of signing.	X	X	X	
Requires gasoline suppliers to uniformly apply all equipment rentals.	X	X	X	X

*No provisions prohibiting operation of retail outlets apply to jobbers.

RETAIL GASOLINE MARKETING LEGISLATION IN OTHER STATES

Five states have enacted some form of retail marketing legislation. The following summarizes the major provisions of each state's legislation:

EXISTING RETAIL GASOLINE MARKETING STATUTES

Major Provisions	MD	DEL	CONN*	VA**	D.C.
Prohibits refiners from operating new company outlets.	X	X	X	X	X
Prohibits refiners from operating existing outlets.	X		X	X	X
Equipment rentals by refiners to be applied uniformly to all dealers.	X				X
Gasoline to be apportioned uniformly to all retail stations during shortages.	X	X			X
Refiner agreements may not require dealers to pay for promotions, giveaways, rebates, or any other advertising techniques.		X		X	
Retail dealers may sell refiner products at prices determined by the dealer.		X			

EXISTING RETAIL GASOLINE MARKETING STATUTES (cont.)

Major Provisions	MD	DEL	CONN*	VA**	DC
Requires gasoline suppliers to extend voluntary allowances uniformly to all retail outlets.	X	X			X
Prohibits distributor from requiring dealer participation in promotional activities.		X		X	X
Prohibits distributors from requiring any minimum sales quotas.					X
Requires distributor disclosure of contractual terms and past history of station.				X	X

*Subsequent legislation allows refiners to operate one retail outlet for test marketing and allows refiners to operate stations on the state turnpike.

**Virginia refiners may not operate a company outlet unless it is located at least 1 1/2 miles from the nearest franchised dealer.

The validity of the Maryland retail marketing statute was tested and upheld in Exxon v. Maryland, 437 US 117 (1978). The U.S. Supreme Court rejected the argument that the statute violated the due process clause, holding that the State has legitimate purpose in regulating the gasoline market. The Court also held that the statute does not unduly burden interstate commerce, even though some companies were eliminated from the market, since the statute itself was not prohibitive or unduly burdensome. The Court found that the states have the power to regulate the gasoline market, absent a relevant Congressional declaration of policy. Finally, the Court found no conflict between the Maryland statute's provisions which require uniformity in pricing by refiners and the Robinson-Patman Act, which would permit localized price discrimination; the permissive nature of the language in the federal act is insufficient basis for finding a federal intent to encourage such discrimination.

STAFF ANALYSES

1. Literature Review (Appendix VII) - Staff reviewed existing literature related to gasoline retail marketing. All have limitations. First, because most of the research is not current, the literature does not evaluate the effects

of price decontrol on the structure of retail marketing or on comparisons of prices between states which prohibit company stores and those which don't.

Second, the effects of world oil market oversupply on retail marketing have not been evaluated.

Third, the increasing share of gasoline distributed by jobbers and its effect on the retail market has not been addressed.

2. The Maryland and Connecticut Experience (Appendices XIII and XIV) - In Maryland, large integrated company stores increased in numbers from 113 to 114 (.8 percent) during the period 1972 to 1977 while the number of independent company stores increased from 39 to 121 (210 percent). Both classes increased their market share for company stores -- by 29 percent and 179 percent, respectively. At the same time, large integrated and independent lessees declined in the number of stations and in market share. Maryland experienced large increases in the number of independent company stores from 1972-1977 and a corresponding large decrease in the number of lessees they supplied.

In Connecticut, both the large integrated and independent company stores increased their market shares, 166 percent and 73 percent, respectively, from 1972-1977. Lessees supplied by them lost 19 and 78 percent, respectively, of their market shares from 1972-1977. The number of stations operated by lessees also declined significantly from 1972-1977.

EIA data suggests different market responses to legislation prohibiting company stores (effective in both states on July 1, 1979). In Maryland, large integrated company stores decreased in numbers from 114 to 32 (-72 percent) during the period 1977 to 1980. The number of independent company stores also decreased from 121 to 40 (-67 percent) over the same period. Both classes experienced market share decreases of -76 percent and -89 percent, respectively. At the same time large integrated and independent lessees increased their market shares by 14.0 percent and 12.7 percent, respectively. Lessees in 1980 supplied 59 percent of total gasoline sold.

In Connecticut, large integrated company stores decreased in numbers from 75 in 1977 to 27 in 1980. The number of independent company stores decreased from 84 to 13. Both classes experienced market share decreases of 60 percent and 87 percent, respectively. Large integrated lessees only increased market share by 1.7 percent while independent lessees lost 20 percent of their market share. Jobbers and bulk purchasers seem to have been the primary beneficiaries of divorcement in Connecticut with an increase of imputed market share from 1977 to 1980. Jobbers and bulk purchasers accounted for an imputed 44.2 percent of total gasoline sales in 1980.

3. Dealer margins and prices - To measure the economic effects of legislation prohibiting company stores, staff compared dealer margins (markup over acquisition price) and wholesale prices for Baltimore and Philadelphia from October 1979 to July 1982 as reported in the "Lundberg Letter."

These observations (shown graphically in Appendix XV) show that wholesale (dealer tanker wagon) prices tracked very closely in the two cities over the time period. They also show that while Baltimore's margins for self-service gas were consistently lower than Philadelphia's, its full service margins were consistently higher. The trends also show the spread between full and self-service margins consistently widening in both cities, but widening at a faster rate in Baltimore than in Philadelphia.

Because the proportions of gasoline sold in each city through full- and self-service modes are unknown, no conclusions can be drawn as to whether the consumer is better or worse off (with respect to price) on average in a state which prohibits company stores versus a state which does not.

Information on the quantity and quality of services available to the motorist in Maryland compared to Pennsylvania before and after legislation prohibiting company stores is also not publicly available.

PRICING AND RENT PRACTICES - RESULTS OF THE GEC STAFF INQUIRY

The two most common complaints of lessee dealers concerning their refiner suppliers were related to refiner pricing and rent practices. To examine the validity of these complaints, the GEC staff requested documentation. Each documented case was then submitted to the company concerned for comment (see Appendix XVI for specific complaints and refiner responses).

1. "Price Squeeze"

Dealers alleged that refiners were retailing gasoline through their company stores at less than the wholesale price available to lessee dealers. Dealers supported their claims by providing copies of their wholesale delivery (tankwagon) invoices and copies of credit card receipts showing a purchase price of gasoline at a competing company store on or near the date of their wholesale delivery. To determine a wholesale price, the price shown on the tankwagon receipt was adjusted to include tax, but exclude rent, even if the dealer's rent was based on gasoline sales volume and was collected at the time of delivery.

The largest number of price-squeeze complaints came from ARCO dealers. ARCO responded that on the dates during which this pricing practice occurred a rebate program (discussed below) was in effect whereby dealers achieving certain sales volume quotas would receive a refund of part of the tankwagon price. Naturally, these refunds were not shown on the tankwagon receipts examined by the GEC staff, although in some cases they operate to reduce the dealer's cost per gallon below the company store's retail price. In other cases, Arco's argument was that had the dealer pushed sales more aggressively by lowering his retail price, he would have qualified for a rebate and reduced his tankwagon price accordingly.

In one case, involving Texaco, the company conceded its station sold at less than the dealer tankwagon price contrary to its corporate policy and attributed it to employee error. A few additional cases which have been documented by dealers have been submitted to the companies, but responses have not yet been received or the company has declined to respond. Summaries of all documented price-squeeze complaints and company responses received are contained in Appendix XVI of this report.

2. Rebates

Most major-brand gasoline suppliers offered rebates to their dealers, jobbers, and company-operated stations based on sales volumes in the time period within which most of the documented price discrimination complaints were received (1981-May 1982). Most of the rebates took the form of a cents-per-gallon price refund on sales in excess of a certain percentage of gasoline sold during the same month the previous year (or during another selected period). The principal dealer and jobber rebate programs in effect in September/October 1981 are shown in Appendix XVII. The rebates were designed as both offensive and defensive strategies. As an offensive instrument, they were intended to encourage price cutting by retailers to move surplus gasoline. Defensively they were to prevent retailers' market shares from being reduced by encroachment by others.

Rebate pricing arguably placed lessee dealers at a disadvantage relative to company stores operated by their refiner suppliers. Many refiner-operated stores appear to have priced their gasoline at retail almost equal to the wholesale (dealer tank wagon) price charged their lessee dealers. By cutting retail prices, these stations hoped to increase volume above their base and rely on the rebates for their profit margin.

Many lessee dealers complained that company stores have "deeper pockets" and can better afford the risk of price and margin cutting and of operating at a loss for extended periods. Lessee dealers may not be able to take this risk. Suppliers counter that many lessee dealers did cut prices and benefit from rebates due to increased volume. There are no publicly available statistics.

To remain competitive with company stores, lessee dealers faced a difficult choice - they could sell at their costs (or below cost when including rent) and hope that they could qualify for rebates by increasing their volumes, or they could keep their standard margin and risk losing volume.

Many historic competitive relationships were disturbed by rebate pricing programs, e.g. a shift in price advantage from high to low volume marketers who increased their base sales. Some jobbers and many dealers believe that rebate pricing is discriminatory because they cannot afford the risk of margin cutting or of operating at a loss for extended periods of time in order to increase volumes sufficiently to qualify for a rebate. They also believe that legal challenge to this practice would be to costly and uncertain to pursue.

3. Trading Zones and Allowances

Some major brand suppliers have also established trading or pricing zones for their retail outlets. These are kept secret for competitive reasons. To meet competition within these trading zones, refiners may reduce their wholesale (dealer tankerwagon) prices to all stations they supply within those zones through temporary voluntary allowances (TVA's) or other adjustments - all of which amount to a discount from the wholesale price. Dealer allegations that the zone boundaries are altered to benefit refiner operated stations at the expense of competing lessee stations or to punish lessees for failing to follow sales advice are impossible to verify.

Our investigation did reveal a number of cases where zones were changed and where variable allowances could work to the benefit of one station over another in close geographic proximity. It should be noted, however, that such allowances appear to be lawful provided they are not given in an attempt to monopolize the market.

4. Rents

We also collected some information on rent increases. Some companies treat rent as negotiable, while others have a fixed formulas. Actual or proposed one year rent increases presented to the GEC staff varyied from 0 to 97 percent. Some of the large increases are summarized in Appendix XVI of this report. This information was submitted to the companies for comment. Where available, their responses are included.

Some refiners justify large rent increases due to the fact that federal government rent controls allowed no increases and caused rents to fall well below prevailing land values. A freeze on rental charges was ordered by the Federal Energy Administration on April 30, 1974. This freeze remained in effect until the Temporary Emergency Court of Appeals ruled against government controls and these were lifted on November 11, 1975. There are no publicly available statistics to determine how many of the lessee dealer station closings were caused by rent increases dealers could not absorb.

In the course of our investigation we encountered marketing practices that worked to the distinct disadvantage of lessee dealers and to the advantage of their competing refiner controlled outlets. We could reach no conclusions as to the extent to which this occurs because our resources and access did not permit a thorough examination of company records. We also could reach no conclusions as to whether this represents an unfair or abusive marketing practice or a reasonable response to changing market conditions.

Our field investigation in the Pittsburgh area on July 26 and the Philadelphia area on July 30 revealed a number of cases where refiner margins are small indeed. The most striking example of this was at Hal Zimmerman's Getty station, which is .6 miles from a company-operated station at Westbrook Road and Springfield, in Clifton Heights. The company station was posting $1.159 for regular gasoline and Mr. Zimmerman was posting the same retail price - after paying a tankwagon price of $1.1525, for a margin of $.0065.

SUMMARY AND CONCLUSIONS

From 1972 to 1980, the structure of the retail gasoline market across the nation and in Pennsylvania underwent significant change. The number of retail outlets leased or owned by independent dealers dropped approximately fifty percent - dropping from 204,146 to 98,804 nationally, and from 10,439 to 5,316 in Pennsylvania. The number of company stores operated directly by refiners nationwide in 1980 (13,737) was roughly equal to the number they operated in 1972 (13,736). In Pennsylvania, the number of company stores increased almost 10 percent - increasing from 786 to 861.

As a group, company stores increased their market share nationwide and in Pennsylvania. As shown in Figure 1, company stores accounted for 7.15 percent of total U.S. gasoline sales in 1972 and 12.4 percent in 1980 - an increase in market share of 73.4 percent. Company stores had a comparatively larger share of the total market in Pennsylvania in 1972 (11.4 percent). Between 1972 - 1980, company stores increased their market share to 18.9 percent of total sales, an increase of 65.8 percent.

Independent lessee dealers lost market share nationwide and in Pennsylvania from 1972 to 1980. Lessee dealers accounted for 36.7 percent of total sales nationwide and 34.4 percent in Pennsylvania in 1972. In 1980, lessee dealers accounted for 24.1 percent of U.S. sales, a 34 percent decrease in market share, and 27.1 percent in Pennsylvania (a 29 percent decrease in market share).

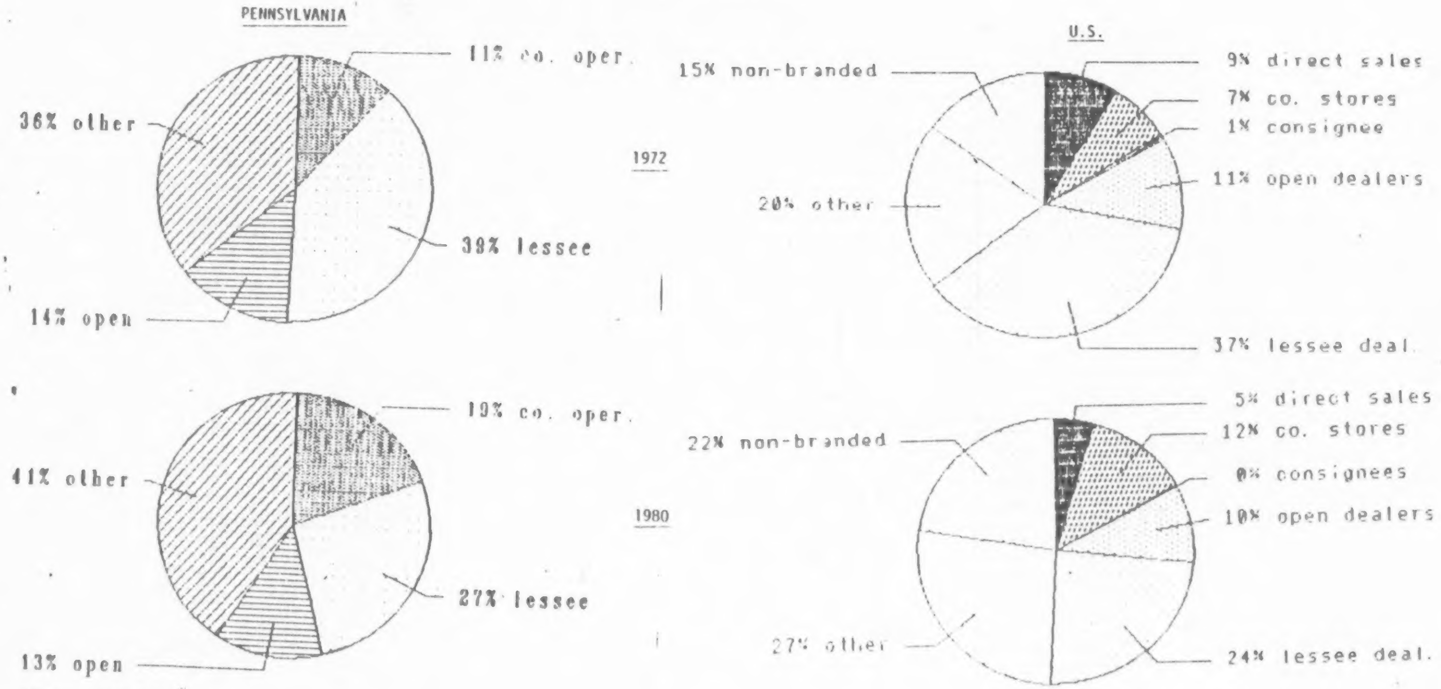
Nationwide, other branded independent marketers increased market share from 20.4 percent to 26.8 percent, an increase of 31 percent. Nonbranded market shares nationally increased from 15.1 percent to 22.2 percent (a 47 percent increase). Direct sales to end users decreased nationally from 8.8 percent to 4.7 percent, a 47 percent decrease. Market share changes among these three groupsfor Pennsylvania are not available. Sales to these three categories combined appear to have increased 16 percent from 35.4 to 41.0 percent.

The precise causes of these changes are unknown. A U.S. Department of Energy study concluded that federal price and allocation controls (in place from 1974-1980) were a major factor in that they placed independent dealers at a distinct disadvantage compared to company stores operated by their refiner suppliers.

Trend data on numbers and types of stations and their market shares seem to support this finding. From 1972 to 1980, Pennsylvania's lessee dealers supplied by large integrated refiners lost from 2 to 9 percent of their market share each year. Company operated stations experienced

FIGURE 1
MARKET SHARES

U.S. and Pennsylvania
1972 and 1980



SOURCE: EIA Data

their greatest increase in market share in 1975. This was followed closely by the greatest percentage losses in the number of independent dealer stations in 1976 and 1977.

Many independent service stations dealers believe that their numbers and market shares have declined and are continuing to decline for other reasons. They believe that as demand for gasoline falls, as average profit margins per gallon of gas sold shrink, and as average volumes pumped per station are increased to maintain profitability, refiners have less incentives to sell their branded gas through lessee dealer outlets and greater incentives to sell directly through their own, especially at choice locations. To remove them as retail competitors, lessee dealers believe that their refiner suppliers are using a variety of marketing practices which place them at a disadvantage and which can and have put many of their numbers out of business.

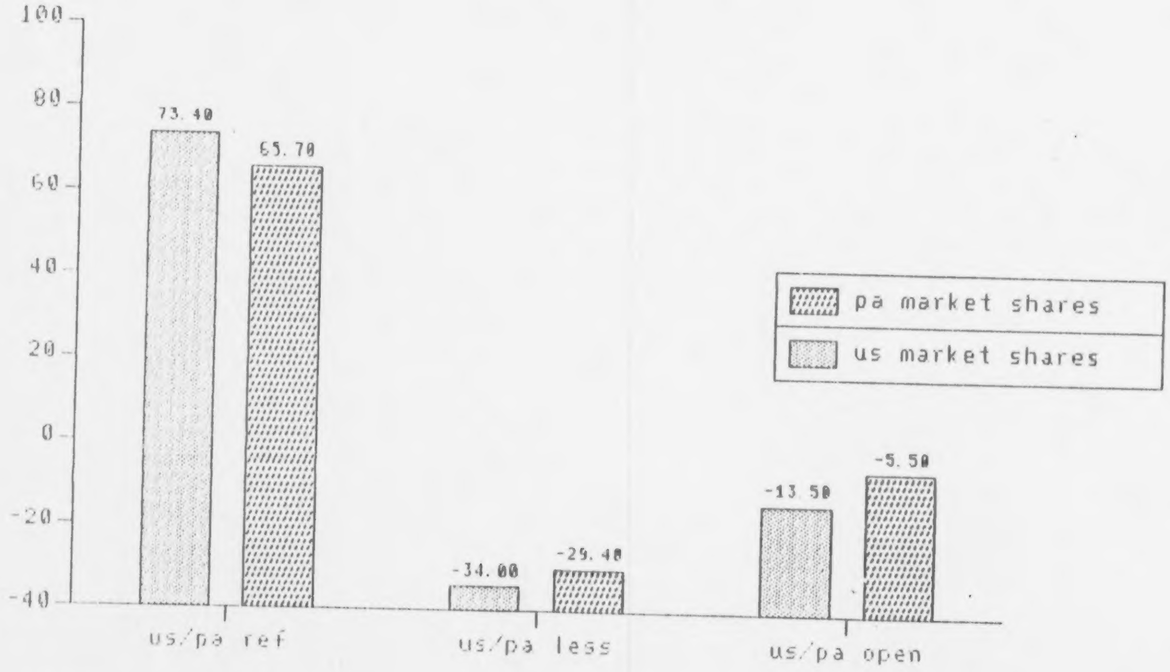
These indirect approaches are used, the dealers argue, because the direct one of simply refusing to renew leases is unavailable. For under the Federal Petroleum Marketing Practices Act (PMPA), no refiner may terminate or fail to renew any franchise with its lessee dealer in order to replace him with a company store operated by its own salaried employees. (See text for the terms and conditions under which termination and nonrenewal are legal). PMPA requires refiners and their franchise dealers to renegotiate the terms of expired leases in good faith.

To determine the validity of these complaints, the staff of the Governor's Energy Council conducted an investigation of pricing and rent practices based on documentation submitted by the Pennsylvania - Delaware Service Station Dealers Association. The complaints and available documentation were then submitted to the applicable major oil company for review. A summary of the complaints and the oil company responses (where available) are included in the Appendix.

This investigation revealed a number of marketing practices which work to the disadvantage of independent dealers. These include: refiner's selling gasoline at retail prices within one cent per gallon above (and in one instance, below) the wholesale prices they charged their lessee dealers; refiner rebates for increasing sales volume; refiner rebates or allowance discounts from wholesale prices based on proprietary trading or pricing zones whose boundaries may be shifted; and large percentage increases (some approaching 100 percent) in rent demanded at the time of lease renewal. The extent to which these practices occur could not be determined, although many dealers contend they are widespread.

FIGURE 2

% change-us/pa market shares-1972/80



SOURCE: EIA Data

Whether these marketing practices will ultimately benefit consumers, are abusive or illegal, or represent a fair and necessary business response to changing market conditions could not be determined in the time and with the information available for this study. The expiration of gasoline allocation and price controls and the discontinuation of federal reporting make it difficult to project how the market will evolve.

Our review of relevant state and federal laws and court interpretations of the PMPA showed that they provide little or no legislative remedies for the practices cited. Courts have also not limited the size of service station rent increases in interpretating PMPA, provided the increase was determined in "good faith" (that is, determined based on a methodology uniformly applied to all its outlets and not applied arbitrarily for the purpose of preventing lease renewal). The Robinson-Patman Act does not apply to the oil company practice of selling gasoline at retail for less than it charges its lessee dealer at wholesale. The Sherman Act only prohibits predatory pricing if an attempt is being made to monopolize a market, a case which would be extremely difficult to develop with so many brands and types of service stations in Pennsylvania. And we could find no instances where Pennsylvania's Unfair Sales Act was applied to gasoline pricing practices.

Four states and the District of Columbia have passed laws designed to restrict or prohibit refiners from operating retail outlets. The constitutionality of Maryland's statute was contested and upheld by the U.S. Supreme Court. The Court held that the statute did not unduly burden interstate commerce, even though some companies were eliminated from the market.

Past attempts to predict or measure the effect such laws have had on redistributing market share, on prices, and on consumer services are limited and leave much to be desired. (See text for specifics). No past study provided, nor were we able to generate, a comprehensive assessment of the full spectrum of "costs and benefits" associated with dealer protection legislation. Questions which could be the subject of further inquiry include: the net effect of such legislation on job gains and losses; the net economic costs and benefits of such legislation on closing, selling, or leasing retail outlets previously operated directly by refiners; the net effect of such legislation on each refiner's market share of branded or unbranded product sales; the degree and extent of marketing practices that work to the disadvantage of independent dealers; the effect of such legislation on jobber and dealer competition and pricing; and the net effect of such legislation on the number and availability of services offered to the motoring public.

While one of the central arguments for and against dealer protection legislation is its employment effects, no one has yet provided any comprehensive estimates of them. Table 1 shows the number of jobs, retail outlets, and gasoline sales estimated in the mid-Atlantic states and the United states using 1977 Bureau of the Census data. (Readers should note that the statistics on total gallons sold and numbers of stations by state do not correlate with information available from DOE or individual states as reported elsewhere in this report.)

Refinery employment is also an important source of jobs in Pennsylvania. Pennsylvania's refineries employ over 13,000 workers directly - the third highest refiner employer among the states - and account for approximately, 8.3% of total U.S. employment in this sector. While a number of small independent refineries have claimed a potential adverse impact on them should they be prohibited from retail marketing, the net refiner employment effect of such legislation is unknown.

TABLE 1

1981 Estimates of Employees, Stations, and Gasoline Sales*

State	No. of Employees	No. of Stations	Gasoline Sold (gallons x 1000)
PA	28,456	7,742	3,652,759
MD	14,056	2,122	1,649,248
CONN	7,870	1,906	966,001
NY	29,638	7,958	3,986,311
NJ	17,558	4,605	2,466,448
U.S. TOTAL	584,227	151,933	74,548,029
U.S. AVER.	11,455	2,979	1,490,961

NOTE: The Census evidently reports greater stations for each state but fewer gallons of gasoline sold, by state, than other sources recorded.

*1977 Census and projections as reported in National Petroleum News 1981 Factbook.

Independent dealers in Maryland and Connecticut benefitted from passage of legislation prohibiting company stores in their states. Data on market share gains and losses by type of outlet, however, suggests that such legislation can induce a variable market response. As refiner operated stations were closed or turned over to lessee operation, Maryland's independent dealers increased their share of total sales by an amount almost equal to that lost by refiner outlets. On the other hand, while Connecticut's lessee dealers experienced a reversal in the market share decline of their national counterparts, they gained only a small portion of sales formerly handled by refiner controlled outlets. Jobbers and unbranded marketers inherited the lion's share.

Advocates and opponents of similar legislation for Pennsylvania argue that the consumer will benefit if their side prevails. The evidence offered by both sides is incomplete or subject to large potential biases.

To determine if it were possible to measure the effect of this type of legislation on consumer prices, the GEC staff compared a large number of price and dealer margin observations by type of sale (full or self-serve) and by type of fuel (leaded regular and unleaded) in a number of East Coast cities as reported by the "Lundberg Letter". The results comparing Philadelphia and Baltimore are depicted graphically in Appendix XV.

These observations show that from October 1979 through July 1982, the average dealer margins (retail less wholesale prices and taxes) in Baltimore were consistently lower for self service gas than in Philadelphia, but consistently higher for full service. All other things being equal, this means that consumers of self service gas are better off in Baltimore than in Philadelphia, but worse off if they buy full service. They also show that the difference between full and self service margins has consistently grown at a faster rate (from 2 to 21 cents) in Baltimore than in Philadelphia (from 2 to between 13 and 14 cents) over the same time period.

Since the "Lundberg Letter" does not regularly report prices and margins by the volumes of gas sold by type of service, there is insufficient information to predict whether consumer prices - on average - will be higher or lower if legislation prohibiting company stores were enacted in Pennsylvania. If the volumes of gas sold through self and full serve in Philadelphia and Baltimore reflect the national average (70 percent self, 30 percent full), the weighted average margins in the two cities appear to have been very close over the time period reported (See Appendix XV).

Consumer gains and losses can be viewed by factors other than the price of gasoline. These include the accessibility of service stations for gasoline and road repair (as measured by the hours of operation, number of service bays, availability of mechanics, repair equipment, and tow service), the availability of full service features (air for tires, water and oil checks, etc.), the availability of home pick-up and/or delivery for customers, and the personal and trusting relationship many dealers cultivate with their customers regarding needed auto repairs.

The extent to which these services may be ultimately lost or gained due to legislative action on divorcement and related provisions is unknown. Most refiner (company) gasoline outlets currently pump relatively large average volume of gasoline, but offer few of the traditional garage services. Most independent outlets depend on garage work for a substantial portion of their profits. To the extent that refiners (and "gas-and-go independents") continue to increase their market share at the expense of lessee and open dealers, these kinds of services will be lost or completely transferred to other kinds of business (e.g. speciality repair garages, auto dealers, and discount chain stores.)

In conclusion, the retail market for gasoline has undergone significant change in the last decade. Total demand for gasoline is declining. High volume "gas-and-go" and convenience store outlet sales appear to be displacing the traditional full service station. And refiners and jobbers appear to have increased their share of total sales at the expense of independent dealers.

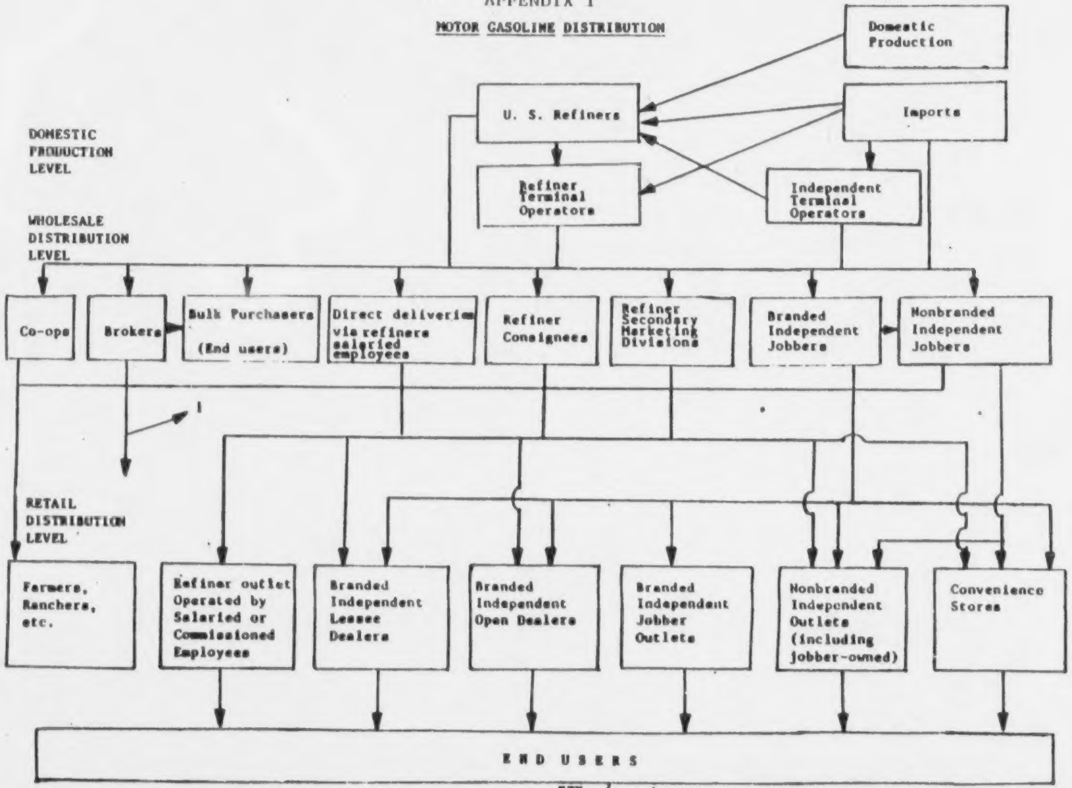
In response to these trends the federal government and a number of states have enacted a variety of laws to protect independent dealers. The strongest form of protection legislation is known as "divorcement." It "divorces" refiners from the retail sector by restricting or prohibiting them from operating retail outlets with salaried employees, although it permits them to continue to wholesale their products to other retailers.

While available evidence indicates that legislation prohibiting company stores has helped the independent dealer, it probably has done little to arrest a marketing trend toward high volume, self service gasoline retail outlets. Following the effective date of the legislation, Maryland and Connecticut lost a smaller percentage of their independent dealers than the national average. Their dealers also appear to have gained part of the market share lost by direct refiner retail outlets. Average volumes sold per station increased consistent with the national trends.

Available evidence provides no clear answer as to how this legislation affects consumer prices, but estimates of prices weighted by type of sale in Baltimore and Philadelphia over a two and a half year period suggest that consumers on the whole are not affected by divorcement legislation (See Appendix XV).

APPENDIX I

MOTOR GASOLINE DISTRIBUTION


DOMESTIC PRODUCTION LEVEL
Domestic Production
Imports
U. S. Refiners
Refiner Terminal Operators
Independent Terminal Operators
WHOLESALE DISTRIBUTION LEVEL
Co-ops
Brokers
Bulk Purchasers (End users)
Direct deliveries via refiners salaried employees
Refiner Consignees
Refiner Secondary Marketing Divisions
Branded Independent Jobbers
Nonbranded Independent Jobbers
1
RETAIL DISTRIBUTION LEVEL
Farmers, Ranchers, etc.
Refiner outlet Operated by Salaried or Commissioned Employees
Branded Independent Lessee Dealers
Branded Independent Open Dealers
Branded Independent Jobber Outlets
Nonbranded Independent Outlets (including jobber-owned)
Convenience Stores
END USERS

KEY { - bypasses chain of distribution and does not supply points on that chain

-L + - enters into distribution chain and can distribute to any end point in that chain

[1] can supply most independent wholesalers and retailers

Source: U.S.HR Report No. 96-1068

APPENDIX II

LARGE INTEGRATED REFINERS

- Amoco
- Arco
- Chevron USA, Inc.
- Cities Service Co.
- Conoco
- Exxon Corp.
- Getty Refining and Marketing Co.
- Gulf Oil Corp.
- Marathon Oil Co.
- Mobil Oil Co.
- Phillips Petroleum Co.
- Shell Oil Co.
- Sun Company Inc.
- Texaco Inc.
- Union Oil of California

APPENDIX III

All Refiners: Number of Directly Supplied Retail Outlets and Average Volume for Months of January and July 1972-80

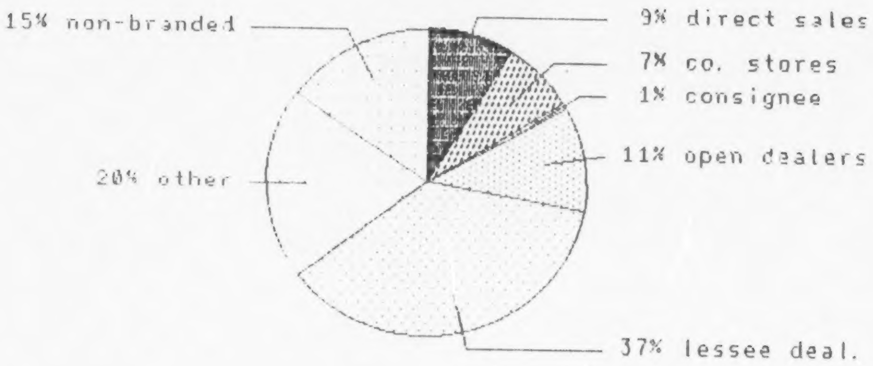
January	Company Stores		Lessee Dealers		Open Dealers		Total	
Year	No.	Avg. Vol.	No.	Avg. Vol.	No.	Avg. Vol.	No.	Avg. Vol.
1972	13,736	42.9	111,531	25.2	92,615	8.5	217,882	19.3
1973	14,047	47.8	107,434	27.5	87,539	10.1	209,020	21.6
1974	13,008	58.5	95,974	29.0	82,723	10.3	191,705	23.0
1975	15,110	54.8	86,771	29.5	77,407	11.1	179,288	23.7
1976	16,043	63.9	80,904	29.8	73,436	11.7	170,383	25.2
1977	16,839	64.7	68,177	34.7	63,227	13.6	148,243	29.1
1978	16,069	69.3	59,883	37.7	58,453	14.4	134,405	31.4
1979	15,010	79.1	54,320	44.8	51,351	18.0	120,681	37.7
1980	13,737	76.3	51,141	41.7	47,663	18.5	112,541	36.1
% Change—'80 vs. '72		**78%**		**65%**		**118%**		

July	Company Stores		Lessee Dealers		Open Dealers		Total	
Year	No.	Avg. Vol.	No.	Avg. Vol.	No.	Avg. Vol.	No.	Avg. Vol.
1972	13,546	51.6	110,158	29.1	91,314	10.9	215,018	22.8
1973	13,156	60.3	102,190	34.0	86,261	13.2	201,607	26.8
1974	13,575	58.8	91,518	35.0	80,433	14.2	185,526	27.7
1975	16,073	59.7	84,493	33.7	77,944	14.0	178,510	27.5
1976	17,292	66.4	74,777	37.1	67,729	15.8	159,798	31.2
1977	16,385	75.9	65,021	40.2	62,972	16.9	144,378	34.1
1978	15,696	83.1	57,860	45.0	57,819	17.9	131,375	37.6
1979	14,329	80.6	53,569	41.7	52,155	18.6	120,053	36.3
1980	13,583	84.2	49,556	45.9	47,646	19.4	110,785	39.2
% Change—'80 vs. '72		**63%**		**58%**		**78%**		

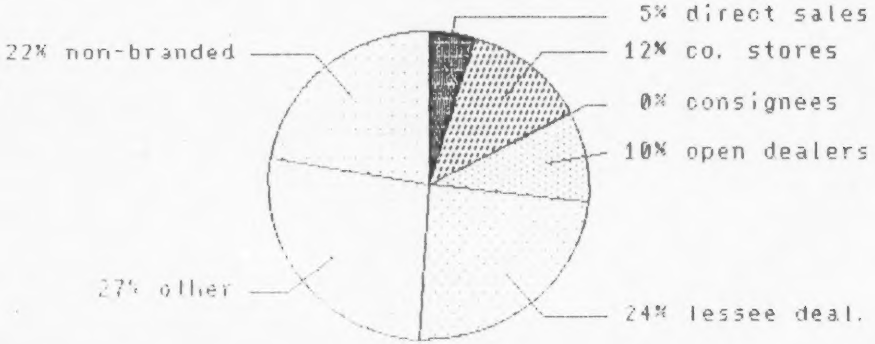
Note: Average Volumes (Avg. Vol.) in thousands of gallons.
Note Also: Data for 50 States and District of Columbia.
Source: EIA Forms P-305/P-306. Table 6-4 (P. 173)

U.S. MARKET SHARES

1972



1980



SOURCE: EIA Data

APPENDIX V

Changes in Relative Shares for Channels of Distribution 1972-78

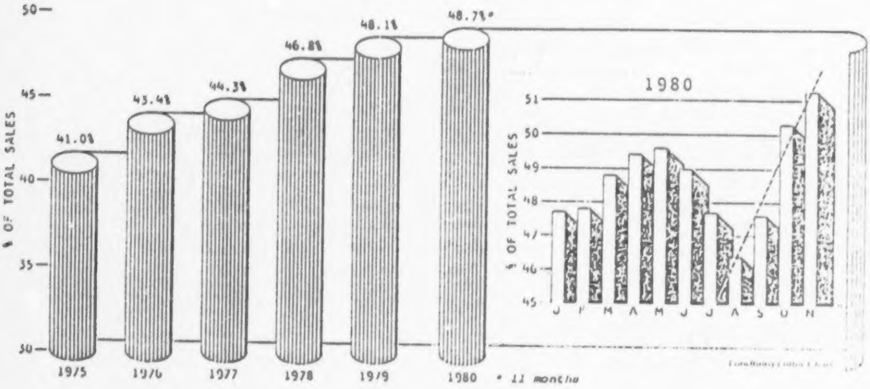
Percent increase or decrease (-) in relative market share of gasoline sales from 1972 to 1978 by state for each channel of distribution (28 largest refiners).

OBS	State	Refiner Stores	Lessee Dealers	Open Dealers	Jobber/ Chain Stores
1	Ohio	21.1354	-21.633	-0.6470	1.1445
2	Michigan	11.6562	-16.160	-2.4713	6.9755
3	Wisconsin	10.3648	-16.054	-5.4243	11.1138
4	Indiana	8.2995	-14.438	-5.4440	11.5825
5	Kentucky	7.7972	-13.289	-1.4598	6.9514
6	Maryland	7.5541	- 7.934	-0.1015	0.2788
7	Illinois	7.2717	-12.952	-1.4422	7.1223
8	Virginia	6.6079	-12.449	-4.5133	10.3540
9	Kansas	6.5115	-12.918	-6.3481	12.7542
10	Arizona	6.4021	-12.776	-2.8310	9.2050
11	West Virginia	6.2740	- 7.452	-3.0717	4.2498
12	Minnesota	5.7422	-11.060	-6.8081	12.1259
13	Pennsylvania	5.7064	- 7.852	0.8686	1.2766
14	Washington, D.C.	5.3367	- 1.870	1.5655	-5.0319
15	Nebraska	5.2595	-11.163	-1.5780	7.4816
16	Tennessee	5.2256	- 9.941	-1.4869	6.2028
17	Missouri	5.1863	-10.111	-2.0261	6.9503
18	New Jersey	5.1455	- 8.238	5.7100	-2.6180
19	New York	4.8567	-10.710	2.1538	3.6996
20	Texas	4.2758	- 9.632	-0.7918	6.1481
21	Louisiana	4.2191	- 6.794	-1.4938	4.0692
22	Florida	4.0431	-13.472	-1.1913	10.6202
23	Georgia	3.3892	-13.511	0.6195	9.5027
24	Iowa	3.3791	-11.916	-2.3295	10.8665
25	Rhode Island	3.0139	- 3.548	6.1981	-5.6641
26	Idaho	2.9170	-16.999	-1.8666	15.9488
27	Oklahoma	2.6817	-11.817	-2.7823	11.9173
28	New Mexico	1.8071	-11.185	-1.6730	11.0515
29	California	1.5733	- 7.611	0.1011	5.9370
30	Alabama	1.5289	- 9.286	-0.3790	8.1367
31	Massachusetts	1.5274	- 8.295	2.5445	4.2234
32	Delaware	1.5207	-18.454	-0.1873	17.1209
33	New Hampshire	1.5072	-12.062	1.2634	9.2912
34	Mississippi	1.3750	- 6.094	-1.2143	5.9333
35	Connecticut	1.0014	-11.734	2.1519	8.5807
36	Nevada	0.8404	-11.686	-1.4576	12.3035
37	Alaska	0.7719	- 2.641	-1.9818	3.8509
38	Colorado	0.6993	-10.979	-1.2444	11.5240
39	Arkansas	0.5843	- 9.920	-3.4924	12.8281
40	Utah	0.5621	-14.258	-0.5130	14.2088
41	Maine	0.2923	-12.706	-0.8491	13.2633
42	South Dakota	-0.0202	- 7.582	0.6880	6.9140
43	South Carolina	-0.0215	- 7.115	-3.9947	11.1307
44	North Dakota	-0.1727	-12.430	-4.1723	16.7747
45	Vermont	-0.2034	-10.675	1.8129	9.0660
46	Hawaii	-0.3081	0.379	-3.7765	3.7053
47	North Carolina	-0.8191	- 4.630	-3.1195	8.5687
48	Wyoming	-1.1356	-12.491	-2.7006	16.3274
49	Washington	-1.4767	-13.418	-0.2881	15.1830
50	Oregon	-1.5699	- 0.691	-1.2002	12.4614
51	Montana	-2.2219	-11.284	-2.1187	15.6242

Source: DOE Title III

APPENDIX VI

JOBBER SHARE OF U.S. GASOLINE MARKET, 1975-1980*



Source: Lundberg Letter, March 27, 1981

APPENDIX VII

LITERATURE REVIEW

A. "Economic Effects of Retail Marketing Divorcement in the state of Maryland"

Umbeck, John R. and Barron John M.

Purdue University and Committee of Independent Refiners/Marketers (CIRM), January 1982.

Umbeck and Barron investigated Maryland retail gasoline distribution before and after divorcement. Data for this study was collected by using 14 page questionnaires which were sent to each company affected by divorcement. Included on these forms were questions about the types of services provided, types of gasoline sold, volumes of gasoline sold, hours of operation, and the prices charged at the pump over a five year period. Umbeck and Barron also obtained similar data on each station which competed with a divorced station. The returned questionnaires provided information on 130 divorced stations and 600 non-divorced competitors. This accounted for 57 percent of Maryland's retail gasoline distribution system.

Umbeck and Barron also determined the prices each station charged for each type of gasoline at both full and self-service pumps before and after divorcement. According to the authors it was possible

> "to isolate, identify, and measure precisely the effects of divorcement on not only the affected stations but each of their competitors." p. 7

From this study Umbeck and Barron concluded that

> "at the divorced station the average price per gallon increased approximately 1.9 cents per gallon for all types of gasoline." p. 6

Self-service prices increased one cent while full service prices increased 4.7 cents. Umbeck and Barron further concluded that:

"At the self-service divorced station the price of regular grade gasoline went up an insignificant amount and almost all of the price increases were accounted for by regular unleaded gasoline. On the other hand, if the station was full service, both regular leaded and regular unleaded increased by the same amounts, 4.7 cents per gallon. Competitors to divorced stations responded in a variety of ways. If the divorced station was self-serve, the competitors raised their prices about .78 cents in response to the divorced station's price increase of one cent. If the divorced station had been a self-service station and it now shut down completely, as several stations did, the competitors responded to the reduced competition by raising their prices a full one cent per gallon. (emphasis added) However, if it was a full service station which was divorced, the competitors responded by raising their prices 3.16 cents per gallon." p. 6

GEC staff review of this study indicates there may be some question as to the validity of the data collected by Umbeck and Barron. The questionnaire used for their study asked each respondent to subjectively identify four or five of his nearest competitors. It then asked the respondents to list their prices and their competitor's price for selected dates. Umbeck and Barron do not indicate whether or not the data was verified by any other source.

B. "The Case for Legislative Relief from the Impending Destruction of Small Business and Competition in the Gasoline Industry" (January 22, 1980).

Allvine, Fred C., Houston, Jack M., and Phillips, Otis P.

This report advocates retail marketing divorcement. It recommends five actions:

1) Prohibit integrated petroleum companies from marketing gasoline through retail gasoline outlets.

2) Sell to all purchasers of gasoline at the rack.

3) Divorce jobbers from direct marketing of gasoline.

4) "Congress should direct the Department of Energy to make necessary adjustments in the crude oil entitlement program to ensure equitable prices of gasoline to dealers at different brands." p. 67

5) "Marketing controls to be phased out as the above recommendations on divestiture, rack pricing, divorcement of jobbers, and wholesale price equalization are implemented." p. 69

C. "A note on predatory vertical integration in the U.S. petroleum industry."

Kaserman, David L. and Rice, Patricia L. (University of Tennessee)

1981 Journal of Economics and Business, Volume 33, No. 3

Kaserman and Rice performed an empirical test which purported to disprove the theory of predatory vertical integration.

Their methodology was as follows:

> The theory of predatory vertical integration implies the following hypothesis:
>
> H_O: $(K/C)^N=(K/C)^I$
>
> H_A: $(K/C)^N=(K/C)^I$
>
> "where $(K/C)^N$ and $(K/C)^I$ are the capital-to-crude ratios of the refineries of the non-integrated and integrated respectively. However, the available data do not permit direct observation of the quantities $(K/C)^N$ and $(K/C)^I$". p. 263 and 264. Kaserman and Rice adjusted the equation to take into account all variables which are readily observable from published data. The equation now becomes:
>
> $$\frac{K_2N}{K_1N} = \frac{K_2I}{K_1I}$$
>
> This is the null hypothesis. And the alternative hypothesis is:
>
> $$\frac{K_2N}{K_1N} \quad \frac{K_1I}{K_1I}$$
>
> The alternative hypothesis is implied by the theory of vertical integration. Relevant ratios for all refineries were calculated.
>
> Refineries were then grouped according to ownership by the eight major firms named in a Federal Trade Commission complaint and all other petroleum firms; and the mean K_2/K_1 ratio was calculated for each group. A t-test for a significant difference

between means then was conducted to test the hypothesis described above. The result obtained failed to confirm that hypothesis.

Kaserman and Rice state:

"On the basis of this simple test, it appears that the theory of predatory vertical integration which provides the economic rationale for many current policy proposals and anti-trust action in the U.S. petroleum industry, is not supported by the empirical evidence exhibited by the firms in this industry." p. 265

Kaserman and Rice further state:

"The existence of a plausible theory does not, in itself justify government regulation of an industry's structure or anti-trust action. Empirical evidence must be examined to determine whether the behavior of firms in the industry corresponds to the implication of the relevant theory. In the absence of such supporting evidence the theory only serves to contribute an air of legitimacy to what is, in fact, a predetermined conclusion." p. 265

They conclude "that current proposals and policy actions that rely on this theory (predatory vertical integration) for their economic rationale should be reexamined in light of these findings." p. 265

D. Hearings before Commerce Committee, Subcommittee Group II, on "Retail Divorcement," House of Representatives, Florida General Assembly, December 1, 1981.

Statement by Arthur E. Price, Administrator, State of Maryland.

Mr. Price states that Maryland has lower prices and a more stable market place because of divorcement. He also noted that "the resulting competition among small businesses has also benefitted the consumer through improved service at the retail service station."

However, staff review of Price's methodology revealed that Pennsylvania taxes were not correctly adjusted. In addition, the analysis failed to examine the overall trend in prices and margins in Balitmore versus other cities.

E. "Gasoline Retail Divestiture: Consumer Interest Legislation?"

Hutchinson, Peter M. (Bowling Green State University)

MSU Business Topics, Spring 1979

Hutchinson lists two economic effects of the enactment of retail divestiture. They are decreased competition and cost increases. Hutchinson feels that economies of scale and efficiencies which result from the interdependence between refining and marketing would be eliminated. Divestiture would

> "increase the uncertainty of planning production schedules and supply logistics. This would necessitate higher inventory levels and high inventory carrying costs would have an impact on overall production costs." p. 54

Hutchinson concludes that the burden of proof is now on legislatures to "demonstrate other conclusive benefits from legislation before divestiture can be economically sound and in the best interest of consumers." p. 55

F. "The State of Competition in Gasoline Marketing: The Effects of Refiner Operation at Retail" (1980).

The Department of Energy

Study required by Title III of the Petroleum Marketing Practices Act.

This study concluded that there was no evidence of predatory subsidization by refiners. And there appeared to be "no massive movement toward such 'company store' operations." (Part 1, p. iii)

This report also noted that:

> "while independent refiners have tended to increase their sales volumes through such operations, the eight largest refiners have exhibited only a very small trend in this direction while the share of sales of all refiners to branded dealers has declined substantially since 1972, this decline has been largely offset by an increase in refiner sales to branded and non-branded wholesalers and chain retailers. Taken together these data are inconsistent with the assertion that refiners are

diverting large volumes of product away from their branded dealers into their company stores. (Part 1, p. iii)

G. Vertical Integration in the Oil Industry

Mitchell, Edward J., Editor

The American Enterprise Institute for Public Policy (1976)

This book examines the oil industry from exploration to marketing of petroleum products. In chapter four, "Vertical Integration in the U.S. Oil Industry," David J. Teece concludes that "vertical divestiture is an entirely inappropriate policy for improving the competitive performance of the petroleum industry and of energy markets in general." p. 182

Teece indicates that:

> "The application of inappropriate tools of economic analysis has led policy analysts to neglect many of the relevent economic and technological subtleties of the petroleum industry." p. 182

Teece further states that by using pertinent tools of economic analysis one discovers that "the case for vertical divorcement fades entirely." p. 182

He writes that:

> "Vertical divorcement could very well have the perverse effect of creating higher prices for petroleum products by virtue of higher costs that would result from increased production, investment, and inventory requirements following an adaptive response to vertical divorcement." p. 182

H. "Implication of Divestiture"

Treasury Department (1976)

This study deals with total divestiture of vertically integrated refiners. It concludes that divestiture would be contradictory to U.S. national interests as well as providing for serious long term effects on the general economy:

"-through delays in meeting our energy goals; upward pressure on energy prices and prices in general; and significant adjustments in our international transactions." p. 5

The report further stated

"Overall, the potential costs in terms of national economic efficiency are high while eventual gains, if realized at all, appear to be small."

I. Where Have All the Stations Gone?"

The Public Relations Department of Ashland Oil, Inc.

This pamphlet provides possible explanations for the decline in the number of service stations in the U.S. The pamphlet attributes the reduction in service stations to a variety of market forces "that have greatly affected the way Americans buy automotive products and services. The pamphlet gives an historical overview of retail marketing of gasoline and automotive supplies and it lists reasons for this decline including:

- The number of outlets in the 1950's and 1960's exceeded what was needed to supply the nation's gasoline demand

- Increased gasoline delivery capacity at new stations

- Shift in marketing of automotive repairs and accessories to major retail stores, automotive parts chains, and retail tire outlets

- New gasoline outlets entered the market through new and existing convenience stores

- Consumers became more price conscious and were willing to pump their own gasoline at lower priced self-service outlets

- Fewer gasoline stations are now required due to decline in gasoline demand which has resulted from conservation and a shift to higher mileage cars.

APPENDIX VIII
PENNSYLVANIA
Refiner Supplied Retail Gasoline Market
(volume in gallons x 1000)
1972-1980

Year	Compa-nies	REFINER OPERATED				COMMISSION OPERATED				REFINER SUPPLIED LESSEE				REFINER SUPPLIED OPEN				TOTAL REFINER SUPPLIED				TOTAL PA GASOLINE SALES VOLUME
		No.	Volume	% Mkt. Sh.	% +/-	No.	Volume	% Mkt. Sh.	% +/-	No.	Volume	% Mkt. Sh.	% +/-	No.	Volume	% Mkt. Sh.	% +/-	No.	Volume	% Mkt. Sh.	% +/-	
1972	L Integ	199	150,914	3.2	—	9	1,898	0.04	—	4648	1,649,123	35.0	—	4808	627,876	13.3	—	9655	2,429,611	51.5	—	4,714,825
	L Indep	361	195,048	4.1	—	53	53,356	1.1	—	349	115,660	2.5	—	276	6,855	0.1	—	986	370,919	7.9	—	
	S Indep	226	193,536	4.1	—	0	0	0	—	253	44,424	0.9	—	105	5,343	0.1	—	584	243,303	5.1	—	
1973	L Integ	184	160,659	3.3	+ 3	6	1,068	0.02	-50	4594	1,733,801	35.8	+ 2	4733	698,342	14.4	+8	9511	2,563,770	53.0	+ 3	4,839,965
	L Indep	384	227,911	4.7	+15	60	58,959	1.2	+9	199	81,703	1.7	-32	247	9,592	0.2	+100	830	378,165	7.8	-1.3	
	S Indep	246	232,541	4.8	+17	0	0	0	0	277	53,637	1.1	+22	144	5,983	0.1	0	667	292,161	6.0	+18	
1974	L Integ	206	173,753	3.7	+12	3	403	0.008	-60	4196	1,583,821	33.6	- 6	4477	670,196	14.2	-1	8879	2,428,176	51.5	-2.7	4,716,830
	L Indep	368	233,487	5.0	+ 8	24	21,721	.5	-58	128	89,672	1.9	+12	179	10,191	0.2	0	676	355,071	7.5	3.8	
	S Indep	260	260,469	5.5	+15	0	0	0	0	279	53,979	1.1	0	130	6,583	0.1	0'	669	321,031	6.8	+13	
1975	L Integ	241	203,720	4.5	+22	0	0	0	-100	3850	1,458,582	32.4	- 4	4071	668,781	14.9	+5	8162	2,331,083	51.8	+ 0.5	4,497,104
	L Indep	372	273,303	6.1	+22	5	2,098	0.05	-90	84	87,347	1.9	0	55	2,804	.06	-70	511	365,452	8.1	+ 8.0	
	S Indep	268	280,917	6.3	+15	0	0	0	0	302	68,858	1.5	+36	152	13,298	0.3	+200	722	363,073	8.1	+19	
1976	L Integ	276	244,441	5.0	+11	0	0	0	0	3528	1,453,240	29.6	-9	3514	635,554	13.0	-13	7318	2,333,235	47.6	- 8	4,901,903
	L Indep	353	303,708	6.2	+ 2	5	480	0.009	-82	68	86,660	1.8	-5	40	1,503	.03	-60	461	392,351	8.0	- 1	
	S Indep	267	306,896	6.3	0	0	0	0	0	306	73,306	1.5	0	118	17,117	0.3	0	691	397,321	8.1	0	
1977	L Integ	260	249,653	5.0	0	0	0	0	0	3031	1,421,759	28.1	- 5	3189	687,553	13.6	+5	6480	2,358,965	47.0	- 1	5,042,105
	L Indep	386	338,786	6.7	+ 8	0	0	0	-100	60	80,042	1.6	-11	51	1,536	.03	0	497	420,364	8.3	+ 4	
	S Indep	257	309,989	6.1	- 2	0	0	0	0	253	63,918	1.3	-13	106	15,349	0.3	0	616	389,256	7.7	- 5	
1978	L Integ	236	230,872	4.6	-10	0	0	0	0	2721	1,394,526	27.3	- 3	2873	703,521	13.8	1	5830	2,328,919	46.5	- 3	5,113,618
	L Indep	371	359,236	7.0	+ 4	0	0	0	0	54	65,692	1.3	-19	37	1,521	.03	0	462	426,449	8.3	0	
	S Indep	266	328,438	6.4	+6	0	0	0	0	227	53,413	1.0	-23	91	15,466	0.3	0	584	397,317	7.8	+ 1	
1979	L Integ	239	209,266	4.2	- 7	1	185	.003	+100	2545	1,272,947	25.8	- 5	2683	679,004	13.8	0	5467	2,161,402	43.8	- 4	4,937,866
	L Indep	374	358,892	7.3	+4	0	0	0	0	45	54,261	1.1	-15	34	2,880	.06	+100	453	416,033	8.4	+ 1	
	S Indep	277	319,855	6.5	+ 2	0	0	0	0	230	55,168	1.1	+10	74	13,056	0.3	0	581	388,079	7.9	+ 1	
1980	L Integ	220	190,717	4.1	- 2	1	2,490	.05	+1566	2384	1,164,329	25.3	- 2	2571	577,328	12.5	- 9	5175	1,934,862	42.0	- 4	4,802,726
	L Indep	365	370,155	8.0	+10	0	0	0	0	46	44,521	0.9	-18	39	2,448	.05	-17	450	417,122	9.1	+ 8	
	S Indep	276	313,872	6.8	+ 5	0	0	0	0	203	39,890	0.9	-18	73	10,036	0.2	-33	552	363,798	7.9	0	

Source EIA Data

APPENDIX IX
PENNSYLVANIA
IMPUTED MARKET (Jobber/Bulk Purchaser)
1972-1980
(Volumes in Gallons x 1000)

Year	Total Refiner Supplied			Total PA Gasoline Sales Volume	Imputed Volume of Jobber/ Bulk Purchasers	% Mkt. Sh.	% +/-
	Volume	% Mkt. Sh.	% +/-				
1972	3,043,833	64.6	-	4,714,825	1,670,992	35.4	-
1973	3,234,096	66.8	+3.4	4,839,965	1,605,867	33.2	-6.0
1974	3,104,277	65.8	-1.5	4,716,630	1,612,353	34.2	+3.0
1975	3,059,608	68.0	+3.3	4,497.104	1,437,496	32.0	-6.0
1976	3,122,907	63.7	-6.3	4,901.903	1,778,996	36.3	+13.4
1977	3,168,585	62.8	-1.4	5,042,105	1,873,520	37.2	+2.5
1978	3,152,685	61.7	-1.8	5,113,618	1,960,933	38.3	+3.0
1979	2,965,514	60.1	-2.6	4,937,866	1,972,352	39.9	+4.2
1980	2,715,782	59.0	-1.8	4,602,726	1,886,944	41.0	+3.0

Source: GDC Staff

Appendix X

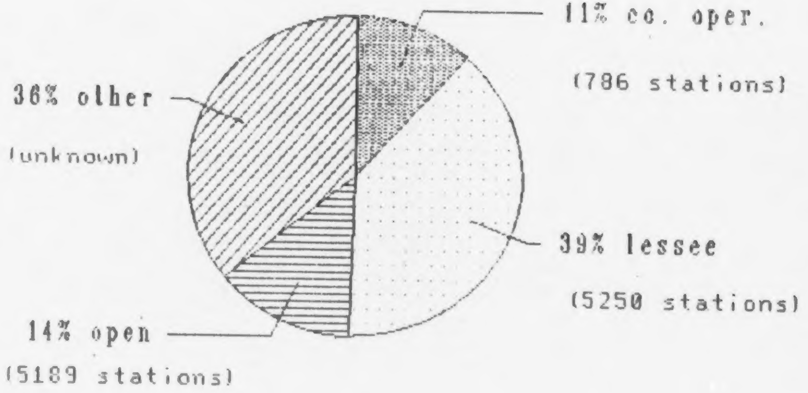
Pennsylvania Average Monthly Volumes Handled Per Station
(Volumes in gallons x 1000)
1972-1980

	Refiner Type	Refiner Operated	%+/-	Refiner Supplied Lessee	%+/-	Refiner Supplied open	%+/-	Station Ave	%+/-
1972	L. Integ.	69.9	-	29.3	-	10.9	-	21.0	-
	L. Indep.	45.2	-	22.6	-	1.9	-	27.1	-
	S. Indep.	77.9	-	14.2	-	3.1	-	33.1	-
1973	L. Integ.	72.7	+4	31.5	+8	12.3	+13	22.7	+8
	L. Indep.	49.5	+10	34.2	+51	3.2	+68	32.1	+15
	S. Indep.	78.8	+1	16.1	+13	3.5	+13	36.5	+10
1974	L. Integ.	70.3	-3	31.5	0	12.5	+2	22.8	+1
	L. Indep.	52.9	+7	58.4	+71	4.7	+47	41.2	+28
	S. Indep.	83.5	+6	16.1	0	4.2	+20	40.0	+10
1975	L. Integ.	70.4	0	31.6	0	13.7	+10	23.8	+4
	L. Indep.	61.2	+16	86.7	+48	4.3	-9	59.3	+44
	S. Indep.	87.4	+5	19.0	+18	7.3	+74	41.9	+5
1976	L. Integ.	73.8	+5	34.3	+9	15.1	+10	26.6	+12
	L. Indep.	71.7	+17	106.2	+22	3.1	-39	70.8	+19
	S. Indep.	95.8	+10	20.0	+5	12.1	+66	47.9	+14
1977	L. Integ.	78.2	+6	37.5	+9	18.2	+21	29.9	+12
	L. Indep.	73.0	+3	95.3	-10	3.0	-3	70.1	-1
	S. Indep.	100.9	+5	17.1	-17	12.7	+5	48.6	-1
1978	L. Integ.	81.5	+4	42.7	+14	20.4	+12	33.3	+11
	L. Indep.	80.7	+11	101.4	+6	3.4	+13	76.9	+10
	S. Indep.	102.9	+2	19.6	+15	14.2	+12	56.7	+17
1979	L. Integ.	73.0	-12	41.7	-2	21.1	+3	32.9	-1
	L. Indep.	80.0	-1	100.5	-1	7.1	+108	76.5	-1
	S. Indep.	96.2	-7	20.0	+2	14.7	+4	55.7	-2
1980	L. Integ.	75.3	+3	39.7	-5	18.6	-13	30.6	-8
	L. Indep.	82.3	+3	86.3	-16	5.7	-25	76.6	-1
	S. Indep.	94.8	-1	16.1	-24	12.3	-20	55.1	-1

	Refiner	%+/-	Lessee	%+/-	Open	%+/-
Cumulative % Change 1972-1980	L. Integ.	+8%	L. Integ.	+35%	L. Integ.	+71%
	L. Indep.	+82%	L. Indep.	+281%	L. Indep.	+200%
	S. Indep.	+22%	S. Indep.	+13%	S. Indep.	+297%

APPENDIX XI

PENNSYLVANIA GASOLINE MARKET SHARES

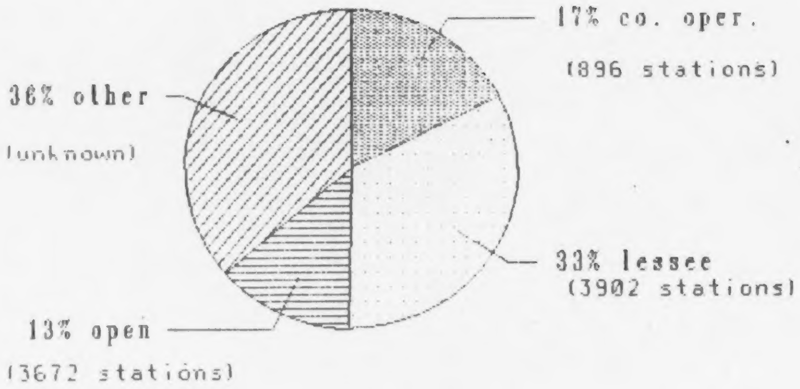


1972

Source: EIA Data

APPENDIX XI (cont.)

PENNSYLVANIA GASOLINE MARKET SHARES

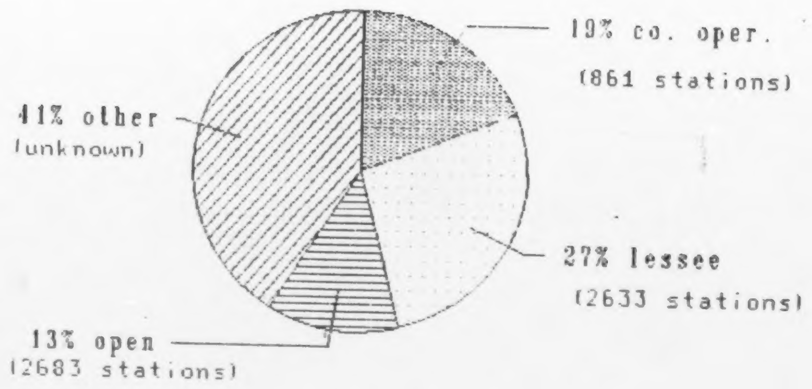


1976

Source: EIA Data

APPENDIX XI (cont.)

PENNSYLVANIA GASOLINE MARKET SHARES

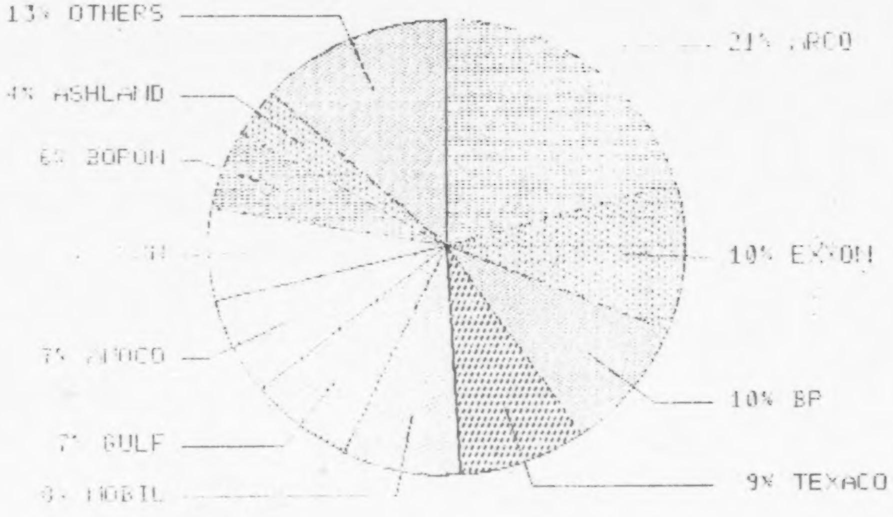


1980

Source: EIA Data

APPENDIX XII

PENNSYLVANIA GASOLINE MARKET SHARES



COMPANY MARKET SHARES-JUL'81-JUL'82

Source: Energy Information Administration Form 25

APPENDIX XIII
Maryland-Connecticut
Refiner Supplied Retail Gasoline Market
(volume gallons x 1000)

Year	Companies	REFINER OPERATED				COMMISSION OPERATED				REFINER SUPPLIED OPEN				REFINER SUPPLIED LESSEE				TOTAL REFINER SUPPLIED				TOTAL GASOLINE SALES VOLUME
		No.	Volume	% Mkt. Sh.	% +/-	No.	Volume	% Mkt. Sh.	% +/-	No.	Volume	% Mkt. Sh.	% +/-	No.	Volume	% Mkt. Sh.	% +/-	No.	Volume	% Mkt. Sh.	% +/-	
Md. 1972	I. Integ	113	91,520	5.2	—	1	17	001	—	990	104,802	5.9	—	1806	776,106	43.8	—	2708	971,638	54.8	—	1,771,004
	Indep	39	57,836	3.3	—	0	0	0	—	148	7,921	0.4	—	334	199,483	11.3	—	531	265,240	14.9	—	
1977	I. Integ	114	134,484	6.7	+28.8	0	0	00	-100	612	124,938	6.2	+5.0	1220	809,565	40.1	-8.4	1946	1,068,987	53.0	-3.2	2,017,628
	Indep	121	186,376	9.2	+178.7	0	0	0	0	18	1,244	06	-85.0	66	119,408	5.9	-47.7	202	307,030	15.2	+2.0	
1980	I. Integ	32	30,882	1.6	-76.1	5	1,908	0.1	+100	532	131,234	7.0	+13.0	1136	859,802	45.6	+14.0	1700	1,023,826	54.2	+2.0	1,887,453
	Indep	40	19,329	1.0	-89.1	0	0	0	0	1	739	04	-33.0	134	253,172	13.4	+12.7	176	273,240	14.5	-4.6	
Conn. 1972	I. Integ	33	19,951	1.5	—	6	8,697	0.7	—	909	172,644	13.3		1548	558,536	43.1	—	2490	751,342	58.0	—	1,296,320
	Indep	103	73,544	5.7	—	42	8,733	0.7	—	31	6,936	0.5	—	80	60,585	4.7	—	214	142,872	11.0	—	
1977	I. Integ	75	55,822	4.0	+186.6	0	0	0	-100	770	210,048	15.1	+13.5	1030	482,378	34.7	-19.0	1875	748,248	53.9	-8.9	1,388,804
	Indep	84	137,336	9.9	+ 73.6	0	0	0	-100	0	0	0	-100	15	14,669	1.0	-78.7	99	152,005	10.9	0	
1980	I. Integ	27	20,503	1.6	-60.0	0	0	0	0	788	214,800	16.7	+10.5	851	453,852	36.3	+1.7	1666	689,155	53.6	-5.5	1,285,701
	Indep	13	16,825	1.3	-86.8	0	0	0	0	1	96	007	+100	9	10,841	8	-20.0	23	27,762	2.2	-79.8	

Source EIA Data

APPENDIX XIV
MARYLAND-CONNECTICUT
IMPUTED MARKET (Jobbers/bulk Purchasers)

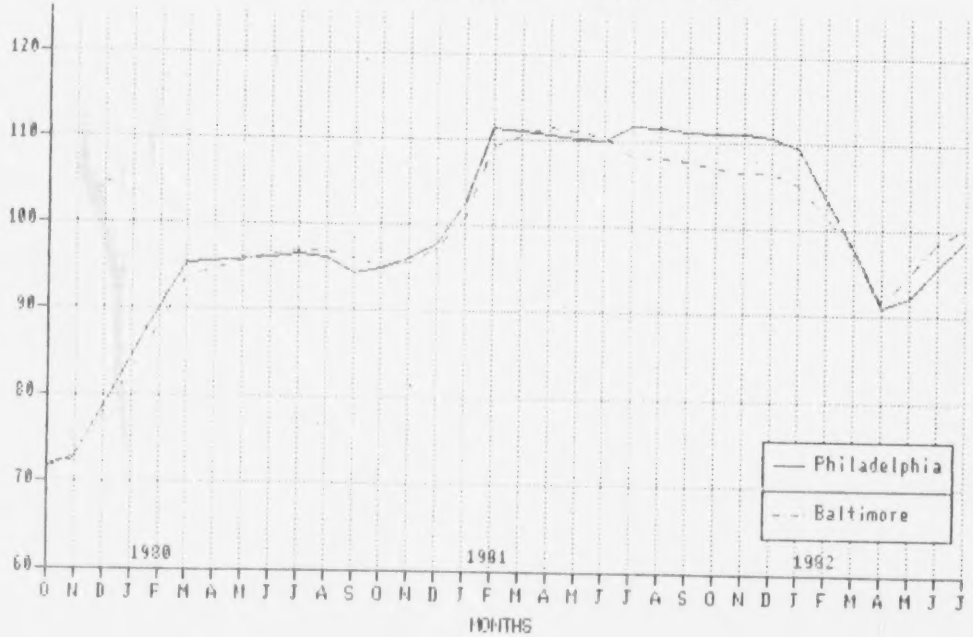
(Volumes in Gallons x 1000)

	Total Refiner Supplied						
Md. Year	Volume	%Mkt. Sh.	%+/-	Total Gasoline Sales Volume	Imputed Volume of Jobbers Bulk Purchasers	%Mkt. Sh.	%+/-
1972	1,236,878	69.8	-	1,771,664	534,786	30.2	-
1977	1,376,017	68.2	-2.3	2,017,526	641,509	31.8	+5.3
1980	1,297,066	68.7	+0.7	1,887,453	590,387	31.3	-1.6
Conn.							
1972	894,314	69.0	-	1,296,320	402,006	31.0	-
1977	900,251	64.8	6.1	1,388,604	488,353	35.2	+12.8
1980	716,917	55.8	-13.9	1,285,701	568,784	44.2	+25.6

Source: [illegible] Staff

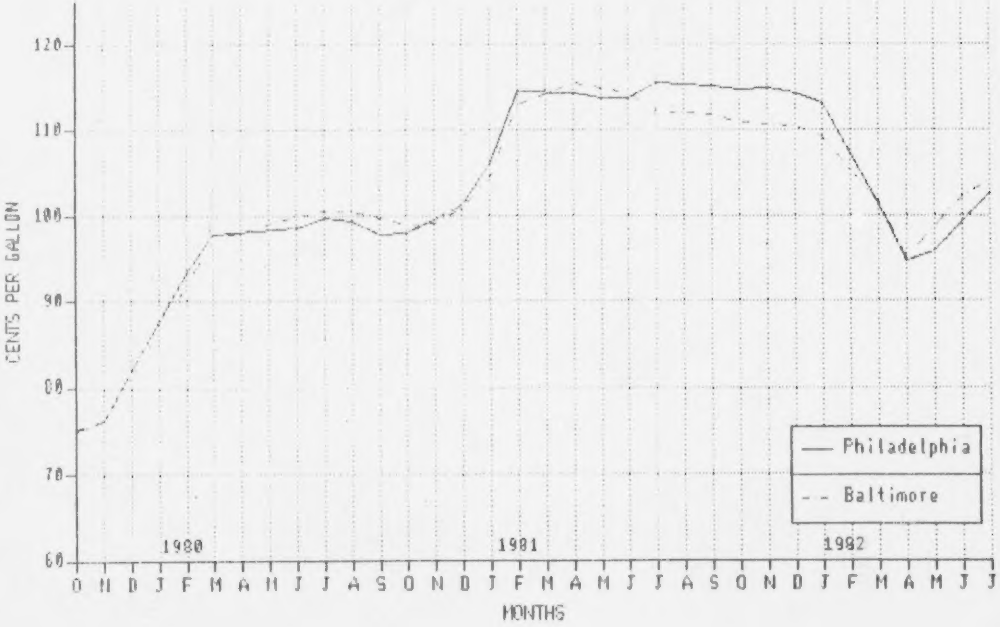
APPENDIX XV

WHOLESALE PRICES, REGULAR LEADED SELF-SERVE
PHILADELPHIA AND BALTIMORE
OCTOBER 1979 TO JULY 1982



APPENDIX XV (ccnt.)

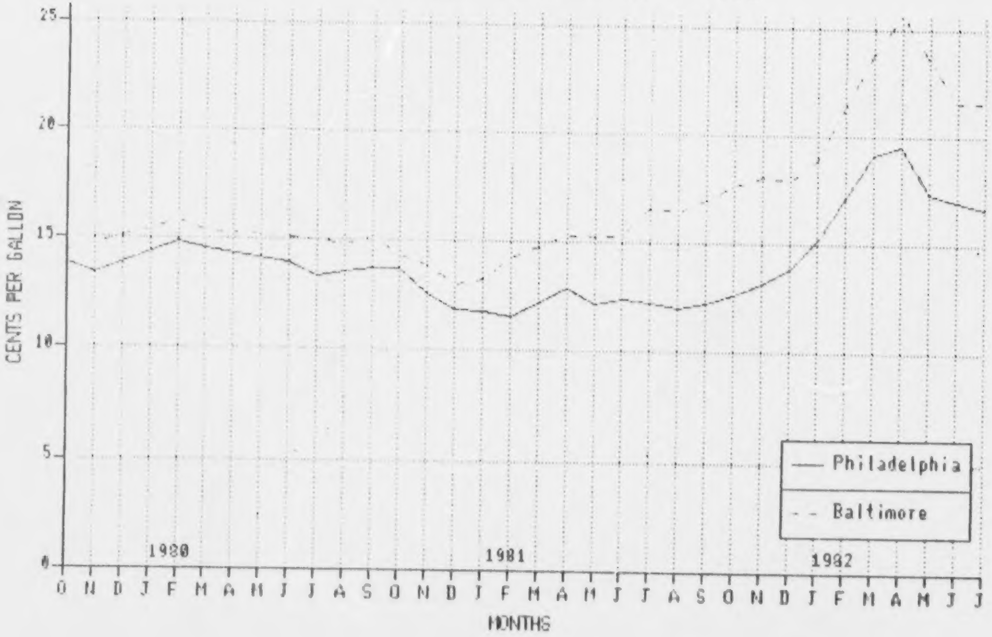
WHOLESALE PRICES, REGULAR UNLEADED SELF SERVE
PHILADELPHIA AND BALTIMORE
OCTOBER 1979 TO JULY 1982



Source: Lundberg Letter

APPENDIX XV (cont.)

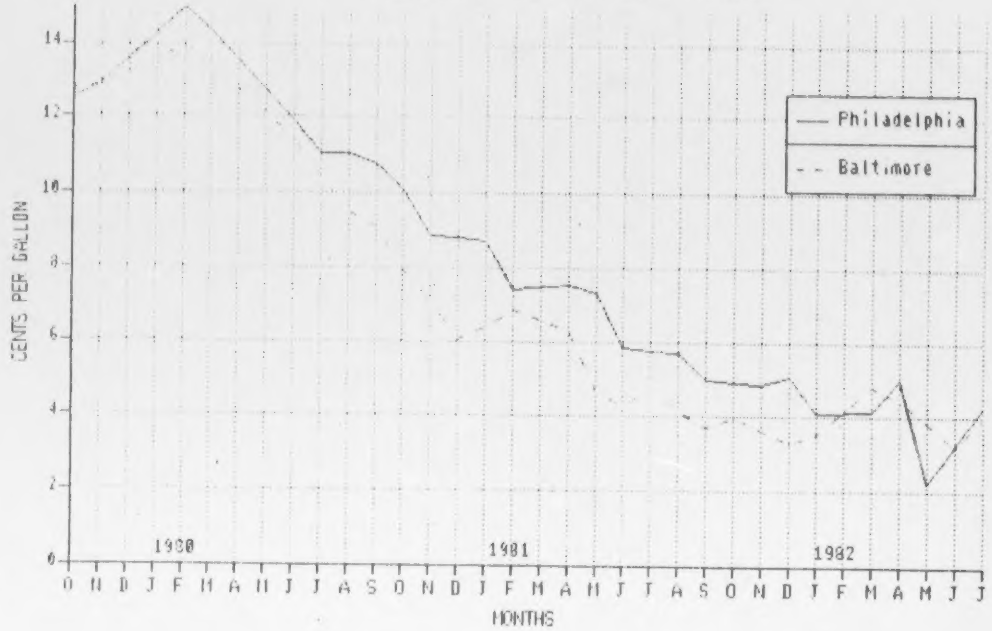
DEALER MARGINS, REGULAR UNLEADED FULL-SERVE
PHILADELPHIA AND BALTIMORE
OCTOBER 1979 TO JULY 1982



Source: Lundberg Letter

APPENDIX XV (cont.)

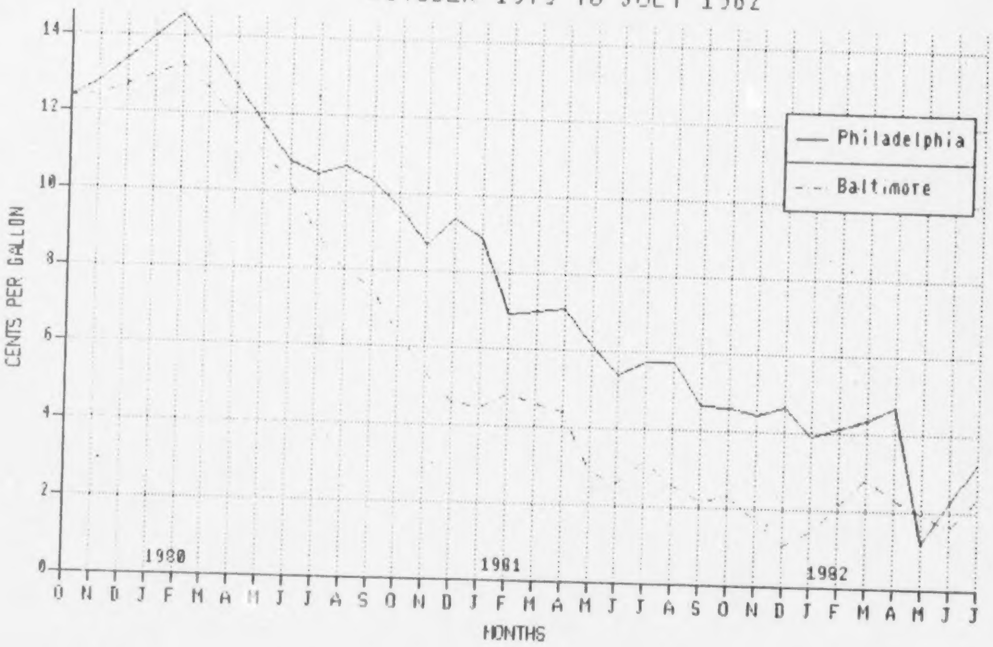
DEALER MARGINS, REGULAR UNLEADED SELF-SERVE
PHILADELPHIA AND BALTIMORE
OCTOBER 1979 TO JULY 1982



Source: Lundberg Letter

APPENDIX XV (cont.)

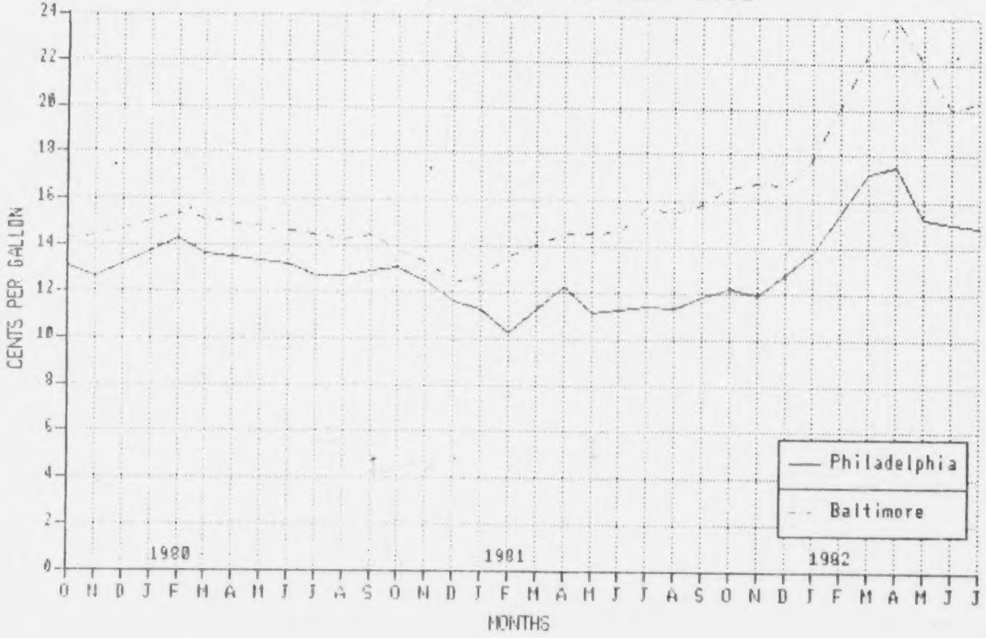
DEALER MARGINS, REGULAR LEADED SELF-SERVE
PHILADELPHIA AND BALTIMORE
OCTOBER 1979 TO JULY 1982



Source: Lundberg Letter

APPENDIX XV (cont.)

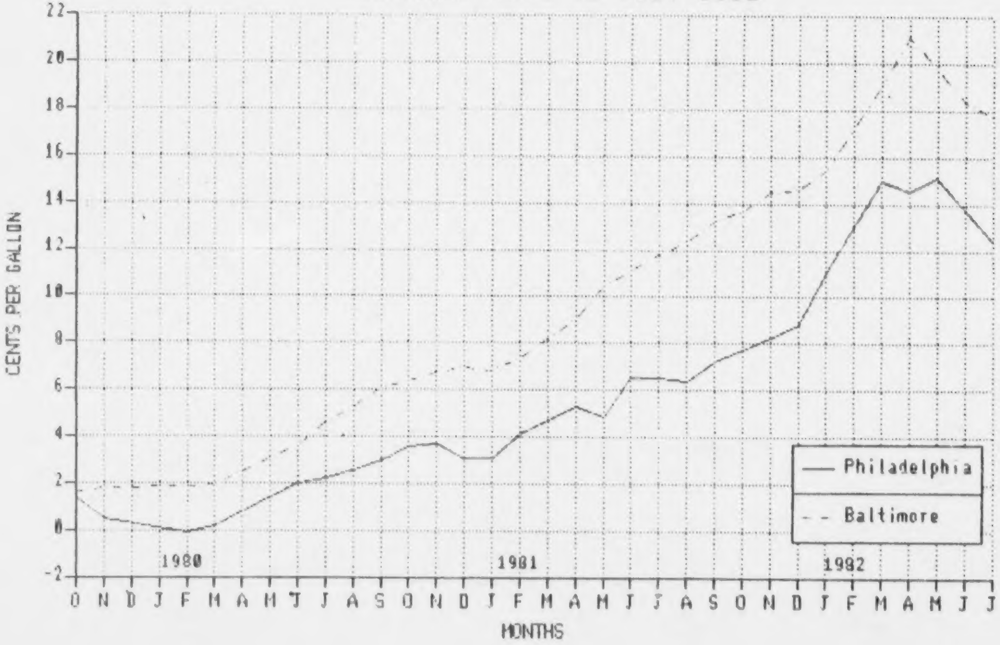
DEALER MARGINS, REGULAR LEADED FULL-SERVE
PHILADELPHIA AND BALTIMORE
OCTOBER 1979 TO JULY 1982



Source: Lundberg Letter

APPENDIX XV (cont.)

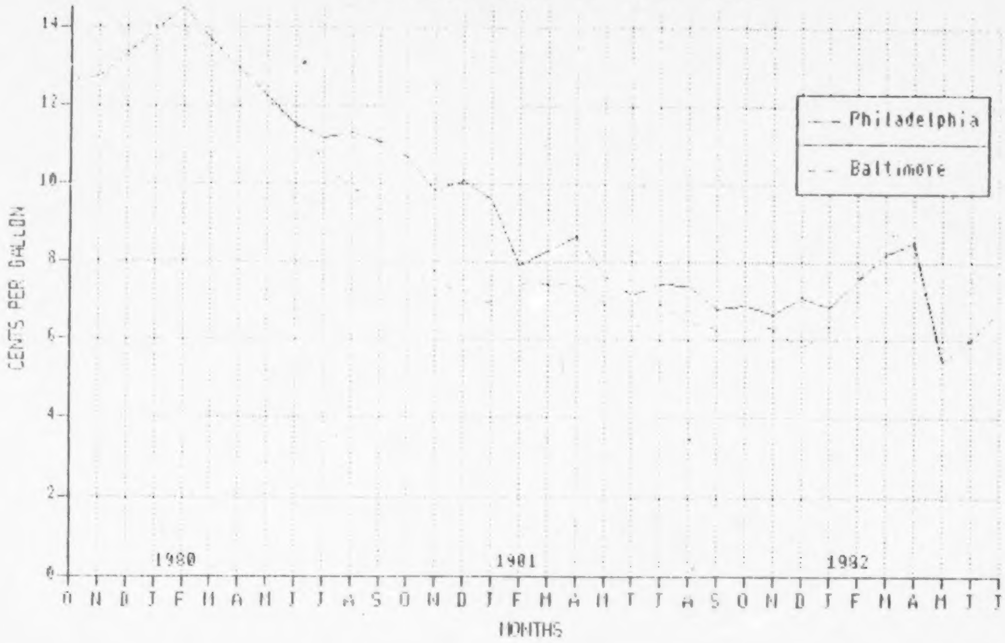
FULL-SERVICE DEALER MARGIN LESS SELF-SERVICE MARGIN
UNLEADED REGULAR GASOLINE
OCTOBER 1979 TO JULY 1982



Source: Lundberg Letter

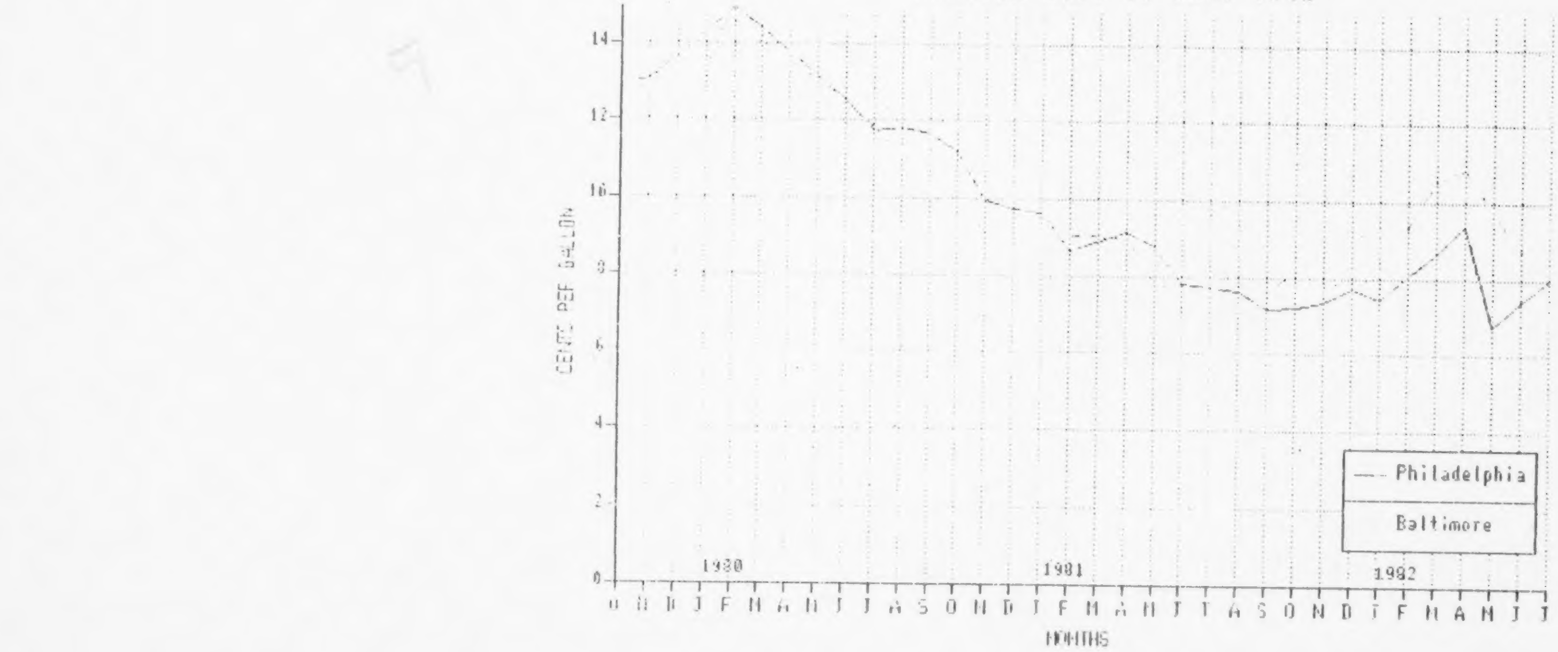
APPENDIX XV (con't)

WEIGHTED DEALER MARGINS, REGULAR LEADED
(ASSUMING 70% SS, 30% FS PURCHASES)
OCTOBER 1979 TO JULY 1982



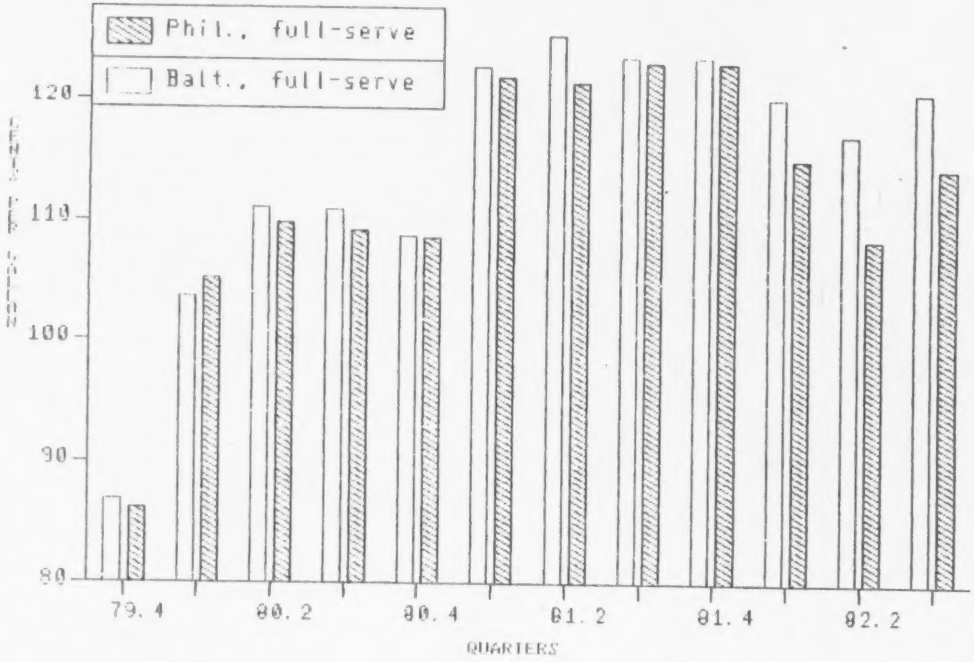
APPENDIX XV (con't)

WEIGHTED DEALER MARGINS, REGULAR UNLEADED (ASSUMING 70% SS, 30% FS PURCHASES) OCTOBER 1979 TO JULY 1982



APPENDIX XV (cont.)

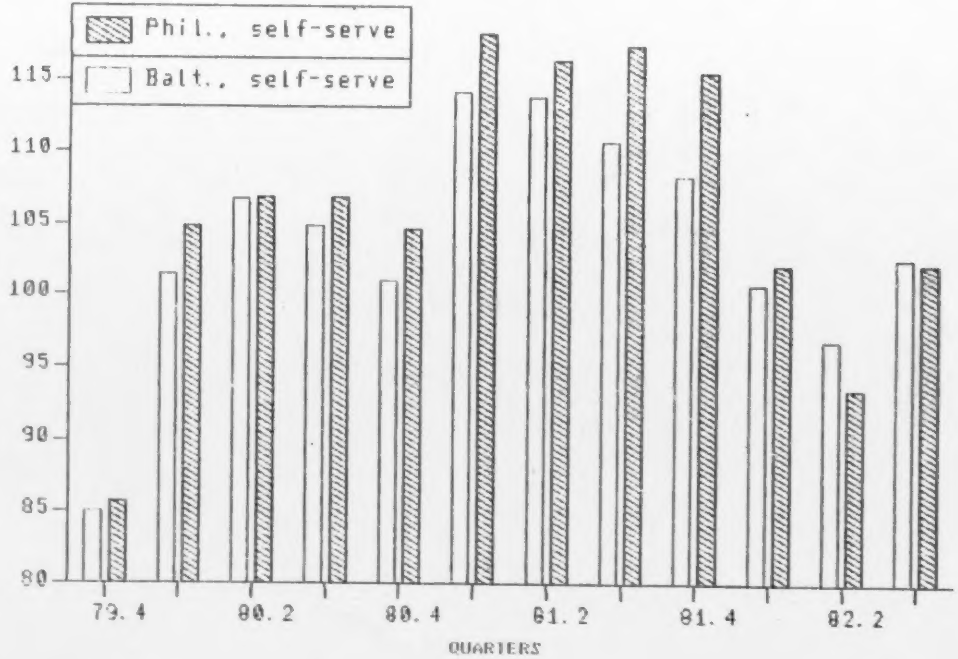
QUARTERLY RETAIL PRICES, REGULAR LEADED GAS
BALTIMORE AND PHILADELPHIA (FULL SERVE)



Source: Lundberg Letter

APPENDIX XV (cont.)

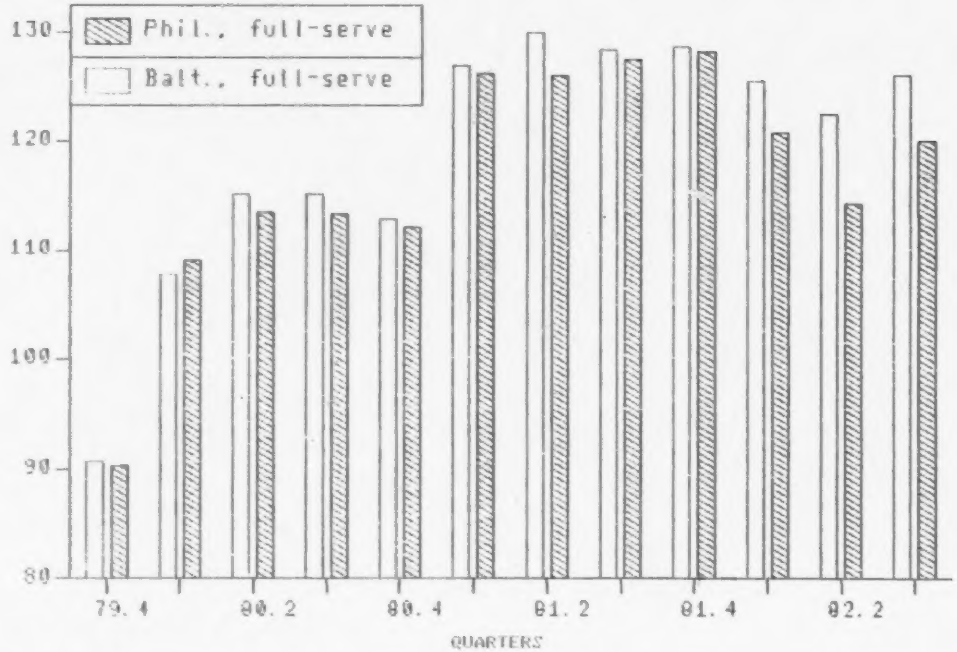
QUARTERLY RETAIL PRICES, REGULAR LEADED GAS
BALTIMORE AND PHILADELPHIA (SELF SERVE)



Source: Lundberg Letter

APPENDIX XV (cont.)

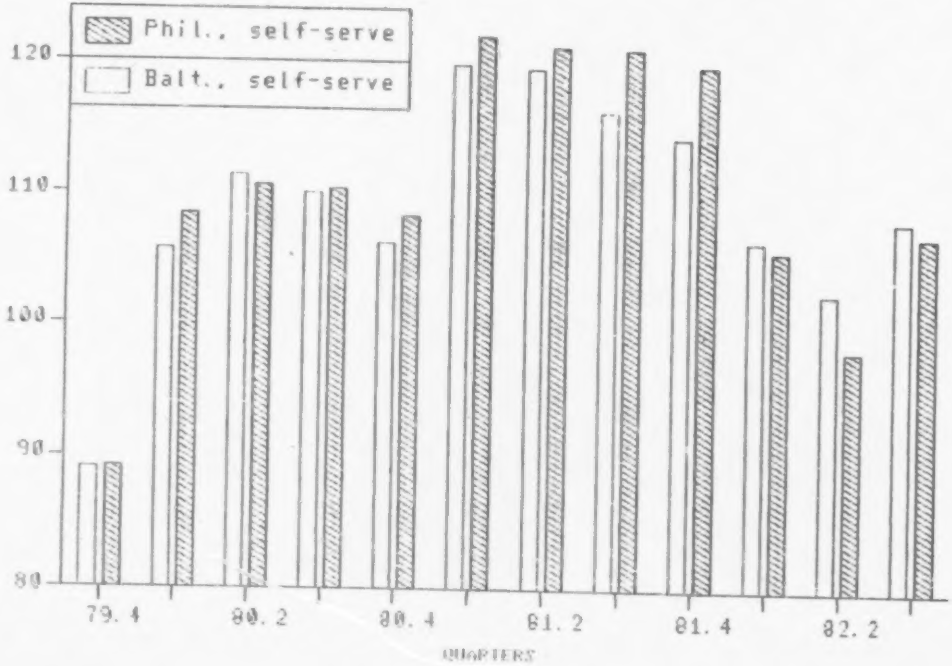
QUARTERLY RETAIL PRICES. UNLEADED GAS
BALTIMORE AND PHILADELPHIA (FULL SERVE)



Source: Lundberg Letter

APPENDIX XV (cont.)

QUARTERLY RETAIL PRICES, UNLEADED GAS
BALTIMORE AND PHILADELPHIA (SELF SERVE)



Source: Lundberg Letter

Appendix XVI
ARCO
Documented Price Squeeze

John W. Young 49 E. Lancaster Ave. Paoli, PA 215-647-9886	a company owned station 2 miles away Arco Berwyn and Lancaster Ave. Berwyn, Pa. was retailing Arco unleaded for $1. (7/2/82), while Young's tankwagon price (7/2/82) was $1.14. Arco response: the tankwagon price went down on that same day subseque to the delivery.
Tony's Arco Service A. E. Scialabba 127 McMurry Rd. Pittsburgh, PA.	Two Company owned stations one and a half miles away Hubsch Mini Market Kockern Street Mt. Lebanon, PA. Colissimo Mini Market Rt. 88 & Grove Rd. Castle Shannon Pittsburgh, PA. are retailing Arco Clear (Hubsch) for $1.099 (5/28/82) and Arco Gasoline, (Colissimo) for $1.059 (5/28/82), while Scialabba's tankwagon price for Arco Clear is $1.123 (5/29/82) and Arco Gasoline is $1.093 (5/29/82). Arco's response: Both stations are independent retailers. Scialabba's tankwagon price was $1.0245 on 5/28/82 and went up on 5/29/82.

Appendix XVI (con't)

ARCO
Documented Price Squeeze

Ronald A. Sidehamer
311 W. Otterman
Greensburg, PA 15601
412-834-1533

Company owned station 3 blocks away

PSI Arco 138
West Pittsburgh Street
Greensburg, PA

was retailing Arco Gasoline for $1.259 (12/10/81), while Sidehamer's tankwagon price (12/10/81) was $1.275.

Arco's response: Mr. Sidehamer received rebates in December of $.06 on 35,000 gallons and $.04 on 2,000 gallons, which are not reflected on the tankwagon receipt.

Paul H. Lamb
101 N. 1st Avenue
Coatesville, PA 19320
215-384,7774

Company owned station 1/2 mile away

Prestige Station
Coatesville, PA

was retailing Arco gasoline for $1.258 (12/15/81) while Lamb's tankwagon price (12/14/81) was $1.2685.

Arco's response: The rebate policy in effect at the time returned 4¢ per gallon over 70% of sales of the corresponding month of the previous year, and 6¢ per gallon over 100% of base sales. Mr. Lamb received a rebate of $109.8 for the month.

Appendix XVI (con't)

SUN

Documented Price Squeeze

W. G. Farrell
Germantown & Valley Forge
Fairview Village, PA 19431
215-539-6667

Company owned station 1 mile away

Sunoco
Ridge Ave. & Mount Ct.
Eagleville, PA

is retailing regular gas for $1.067 (4/28/82), while Farrel's tankwagon price (4/26/82) is $1.092.

Sun's response: The stations are 2.1 miles apart by road, and in entirely different marketing areas. The price at the Eagleville location was set to meet competition from competing stations on Ridge Avenue. At the time, Sun had a rebate plan in place which returned to the dealer $.08 per gallon on purchases over 75% up to 200% of the dealer's volume in the corresponding month of the previous year. Any amount over the 200% of the dealer's volume would return an additional $.05 per gallon. In addition a $.02 bonus would be awarded on all purchases if the dealer made 100% of the base volume.

UNITED

Documented Price Squeeze

Mrs. Coulter
Coulter Keystone Station
R.D. #5 Box 149
Indiana, PA 15701
412-354-2897

Company owned station 5 miles away

SKAT
Route 286 South
Indiana, PA

is retailing regular gas for $1.149 (5/21/82), while Coulter's tankwagon price (5/20/82) is $1.186.

United's response: United declines to discuss its pricing policies.

TEXACO

Documented Price Squeeze

Bill's Texaco Service
William Strauss
5510 Allentown Blvd.
Harrisburg, PA 17102
717-652-9876

Company owned station 1 block away

Friendly Mini Mart
North Mountain Road
Harrisburg, PA

is retailing for $1.099 (6/1/82), while strauss's tankwagon price (6/1/82) is $1.158. (Fire Chief)

Texaco's response: this was due to employee error. Company policy prohibit company owned stations from selling for less than the dealer.

GULF
Documented Price Squeeze

Dorothy Pawlak
Pawlak Gulf Service Station
4801 Center Avenue
Pittsburgh, PA 15213

Company owned station 2 blocks away:

Allen Roberts Gulf Station
195 N. Craig at Bayard Street
Pittsburgh, PA

is retailing Gulf Crest for $1.079 (5/20/82), while Pawlak's tankwagon price (5/20/82) is $1.12.

Company owned station 6 blocks away

Gulf Station
Main and Liberty Street
Pittsburgh, PA

is retailing Good Gulf for $1.169 and Gulf Crest for $4.269 (7/14/82), while Pawlak's tankwagon price (7/13/82) is $1.164 for Good Gulf and $1.254 for Gulf Crest.

Roy A. Field
Field Gulf Station
4001 Butler at 40th
Pittsburgh, PA. 15201

Company owned station 1/2 mile away

Liberty Avenue Gulf Station
4133 Liberty & Main Street
Pittsburgh, PA

is retailing Gulf Crest for $1.129 (5/21/82), while Field's tankwagon price (5/18/82) is $1.115.

Gulf response: Gulf has established "Competitive trading areas" for pricing purposes. In neither of the above cases is the independent dealer in the same trading area with a company-operate station. Company owned stations are pric at (but not below) the dealer tankwagon price, unless in the same zone as an independent dealer. On May 20, the dealer tankwagon price increased, and the Craig and Bayard location was inadvertently priced $.006 below DTW for a few hours.

DEALER	COMPANY	CURRENT RENT MONTHLY	PROPOSED NEW RENT MONTHLY	INCREASE
*SPITZER, HARRY Roosevelt Blvd & Cottman Ave Philadelphia, Pa.	Mobil	900.00 (approximately)	1,039.00 (1st yr.) 1,196.00 (2nd yr.) 1,196.00 (3rd yr.)	15%
*GIBLOVITZ, DAVID 7901 Bustleton Ave. Philadelphia, Pa.	Mobil	750.00	1,043.00 (1st yr.) 1,204.00 (2nd yr.) 1,204.00 (3rd yr.)	39%
*ZELLER,PAUL 741 N. Cedar Crest Blvd. Allentown, Pa.	Mobil	1,470.00	1,873.00 (1st yr.) 2,206.00 (2nd yr.) 2,206.00 (3rd yr.)	27%
*SIMMS, ROBERT Ridge and Butler Pk. Conshohocken, Pa.	Mobil	850.00	1,250.00 (1st yr.) 1,450.00 (2nd yr.)	47%

Mobil's response: not yet received.

DEALER	COMPANY	CURRENT RENT MONTHLY	PROPOSED NEW RENT MONTHLY	INCREASE
*AMENTA, TOM 4201 Easton Road Glenside, Pa.	Exxon	625.00 (approximately)	984.00 (1st yr.) 1,180.00 (2nd yr.) 1,376.00 (3rd yr.)	57%
*BORKOWSKI, EUGENE Rd 309 & 63 North Wales, Pa.	Exxon	600.00 (approximately)	869.00 (1st yr.) 1,042.00 (2nd yr.) 1,215.00 (3rd yr.)	45%
*MACAVOY, PETER Rte 352 & Cassatt Road Berwyn, Pa.	Exxon	1,250.00 (approximately)	1,575.00 (1st yr.) 1,890.00 (2nd yr.) 2,205.00 (3rd yr.)	26%
RALSTON, FRANK Rt. 19 Mars, Pa.	Exxon	3,450.00	3,985.00 (1st yr.)	15%

Exxon's response: Exxon's lease agreement includes a reopener clause that would permit a rent increase in years two and three, however, it is not done automatically.

*Provided by Norman Zarwin, Attorney for the Independent Service Station Dealers of Pennsylvania and Delaware.

DEALER	COMPANY	CURRENT RENT MONTHLY	PROPOSED NEW RENT MONTHLY	INCREASE
*ZAWACKIS, ANTHONY Huntingdon-Rockledge Huntingdon Valley, Pa.	Getty	950.00	1,140.00 (1st yr.) 1,365.00 (2nd yr.) 1,575.00 (3rd yr.)	20%

Getty's response" Mr Zawackis's current monthly rent is $950, the negotiated new rental is $1050 for one year and the percentage of increase each year is 10.5%.

*DEPPI, ROBERT 818 Warfield Huntingdon Valley, Pa.	Getty	700.00 (Approximately)	1,020.00 (1st yr.) 1,200.00 (2nd yr.) 1,300.00 (3rd yr.)	46%

Getty's response: Mr. Deppi's current monthly rent is $850, the negotiated new rental is $950 (initial 3 months of 1st year), $1020 (remaining 9 months of 1st year), $1200 (2nd year) $1380 (3rd year) and the percentage of increase each year would be 17.9%, 11.6% and 15.0%.

*SEIDHORST, ERIC Chester Rd & Mt. Holyke Swarthmore, Pa.	Getty	725.00	930.00 (1 yr. only) Went out of business	28%

Getty's response: This dealer chose to leave the station at the end of the current lease term. Getty has removed the tanks and the station is for sale.

*SMOREY, EDWARD CONNIE P. O. Box 109 Rd 3 Mars, Pa.	Gulf	958.00	1,375.00 (1st yr.)	44%

Gulf's response: not yet received.

SANECIS, JIM Rte 309 & Hilltown Pike Line Lexington, Pa.	Sun	1,750.00	2,008.00 (1st yr.) 2,208.00 (2nd yr.) 2,429.00 (3rd yr.)	15%

Sun's response: A new 3 year lease has been negotiated beginning 6/10/82 at $1,925 per month for year 1, $2,025 per month for year 2, and $2,250 per month for year 3. The new 3 year lease represents modest yearly increases going into 1985.

*FRASCHETTI, ANTHONY 545 Beidler Road King of Prussia, Pa.	Texaco	900.00	1,575.00 (1st yr.) 1,735.00 (2nd yr.) 1,910.00 (3rd yr.)	75%

Texaco's response: not yet received.

*Provided by Norman Zarwin Attorney for the Independent Service Station Dealers of Pennsylvania and Delaware.

DEALER	COMPANY	CURRENT RENT MONTHLY	PROPOSED NEW RENT MONTHLY	INCREASE
LAIRD, GRAY 322 Showen Road Exton, Pa.	Amoco	1,176.00	2,312.00 (1st yr.)	97%

Amoco's response: Amoco's rent program evaluates each service station on land, improvements and equipment. In 1979 appraisers determined Mr. Laird's station to be worth $300,000.00. The 1982/83 rental of $2,312 a month does not equal even 10% return on Amoco's investment.

DEALER	COMPANY	CURRENT RENT MONTHLY	PROPOSED NEW RENT MONTHLY	INCREASE
AMADIO, LARRY 900 East Willow Grove Wyndmoor, Pa. 19118	ARCO	1,200.00	2,300.00 (1st yr.)	91%
BERESCHAK, EDWARD 120-134 S. Main St. Shenandoah, Pa. 17976	ARCO	643.00	1,300.00 (1st yr.)	100%

ARCO's response: not yet received.

APPENDIX XVII

PRINCIPAL DEALER AND JOBBER REBATE PROGRAMS

	DEALER					JOBBER				
	Rebate (¢/gal)	Start (%)	Cutoff (%)	Second Rebate (¢/gal)	Second Cutoff (%)	Rebate (¢/gal)	Start (%)	Cutoff (%)	Second Rebate (¢/gal)	Second Cutoff (%)
Amoco	5	75	None	-	-	3	75	130	-	-
Arco	4	70	150	-	-	4	70	150	-	-
Chevron	4	50	80	6	None	4	50	80	6	100
Citgo	1.5	90*	150	-	-	1.5	90*	150	-	-
Exxon	4	80	None	-	-	3	60	120	-	-
Getty	4	70	150	-	-	4	70	150	-	-
Gulf	4	75	100	6	None	4	90	150	-	-
Mobil	4	70	None	-	-	4	70	150	-	-
Shell	4	70	None	-	-	4	70	150	-	-
Sohio/BP	4	70	None	-	-	-	-	-	-	-
Sunoco	5	80**	None	-	-	1	60*	None	-	-
Texaco	4	50	80	6	None	4	50	80	6	200
Union***	1	80*	80	3	150	1	80*	180	3	150

Note: Rebate programs shown are the dominant ones east of the Rockies (PADs I, II, III). Startup and cutoff percentages are usually based on the year-earlier month, with some exceptions.

* Rebate applies to all gallonage, not just that above the startup percentage.

** 80% + 8,000 gal.

*** Third rebate level is 2¢ gal. above 150%, for both dealers and jobbers.

Source: Lundberg Letter, October 30, 1981

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FOOTNOTES

[1] The State of Competition in Gasoline Marketing, Part I, (Washington: Department of Energy, 1980), p. 24.

[2] Ibid. p. 23

[3] Ibid. Appendix B p. 20

[4] Ibid. Appendix B p. 15

[5] Ibid. pp. 124 to 126

[6] Dan Lundberg, Station Population Falls in 1979, Lundberg Letter, January 11, 1980, Volume VII, No. 11, p. 1.

[7] Fred C. Allvine, Jack W. Houston, and Otis M. Phillips, The Case for Legislative Relief from Impending Destruction of Small Business and Competition in the Gasoline Industry, January 22, 1980.

APPENDIX D.—EXAMPLE OF SERVICE STATION CONTRACT OFFERED BY GULF OIL CORP.

Gulf Oil Corporation

SERVICE STATION LEASE

This Lease, made this ________ day of ________________, 19____, between Gulf Oil Corporation, a corporation, acting through Gulf Refining and Marketing Company, a Division of Gulf Oil Corporation, having a place of business at ____, hereinafter called "Lessor", and ____, whose address is ____, hereinafter called "Lessee",

WITNESSETH:

1. Lessor leases to Lessee the premises located in the __________ of ____________ and State of ____________, more particularly described as follows:

together with all improvements and fixtures erected or installed thereon and equipment as itemized in the "Equipment Schedule" attached hereto.

2. The term of this Lease shall begin on the _______ day of ______________, 19____ and terminate at midnight on the _______ day of ______________, 19____. It is understood and agreed that any holding over by Lessee at the end of this Lease, or at the end of any extension period, without this Lease having first been renewed or extended in writing, shall not be considered as a renewal or extension of this Lease for any period longer than one month. Lessee may terminate this Lease at any time during any term hereof by giving Lessor ninety days prior written notice of termination. Lessor may terminate or cancel this lease at any time during the term hereof or nonrenew this Lease at the termination of the term hereof in accordance with the provisions of sections 9 and 10 of this Lease. Concurrently herewith, Lessor and Lessee are entering into a Contract of Sale establishing the terms for sale of petroleum products. Lessee agrees, as a covenant of this Lease, that the breach of any of the terms or conditions of the Contract of Sale shall constitute a breach of this Lease, and that termination of the Contract of Sale shall, at the option of Lessor, terminate this Lease.

3. Lessee covenants and agrees to pay to Lessor for the above premises during the term of this Lease rent as provided in the "Rental Schedule" attached hereto.

4. Lessee covenants and agrees as follows:

(a) Lessee has examined and is familiar with the condition of the premises, buildings, equipment, and fixtures located thereon, and acknowledges they are received by Lessee in good order and condition (except as otherwise specified); without warranty by Lessor as to the condition or repair thereof.

(b) Lessee will not permit the premises to be used for any illegal or immoral purpose, or permit waste or nuisance thereon.

(c) The leased premises shall be used for the storage and sale of petroleum products and such other articles as are customarily sold at automotive service stations, and Lessee agrees to maintain adequate supplies of petroleum products, tires, batteries, accessories, and specialties for sale to the motoring public.

(d) Lessee will not, except on prior written consent of Lessor, (1) paint or repaint the building or any of the structures or fixtures located thereon, (2) make any alterations, additions, or changes to the buildings, structures, or fixtures, both interior and exterior, (3) install or affix to the buildings, structures, or fixtures or to the walls, doors, or partitions thereof, including the rest rooms, any vending or merchandising device, (4) affix any type of coin-operated lock or device to the door of the rest rooms, or (5) erect or install any additional structures, fixtures, or equipment anywhere on the premises.

(e) Lessee shall monitor the integrity of underground product storage tanks and dispensing systems by maintaining strict inventory control. Lessee shall immediately notify Lessor upon discovery of any inventory loss or other condition which may be the result of a leaking tank or other equipment failure. Lessor shall promptly investigate and undertake the appropriate remedy. Lessee shall not otherwise interfere with, repair, or replace underground product storage tanks or dispensing equipment unless specifically authorized in writing by Lessor.

(f) Lessee shall pay all gas, electric, and other fuel charges, water, sewer, rents, license fees, taxes, fines, penalties, and other charges accruing in connection with the use of said premises and operation of Lessee's business, and Lessee shall reimburse Lessor if any charges are collected from Lessor.

(g) Except for ordinary wear and tear and damage caused by fire or other unavoidable casualty, Lessee agrees (1) not to cause or permit any damage, loss, or injury to any of the properties and equipment leased herein and to be solely liable and fully reimburse Lessor for the full amount of any damage, (2) to perform all necessary maintenance and repairs to the buildings, structures, fixtures, and equipment and, where repairs are impractical, to replace the fixtures and equipment, except the storage tanks and dispensing equipment, and (3) upon termination or cancellation of this Lease, to deliver immediate possession of said premises, equipment, and fixtures in the same good condition as when received.

5. Lessor shall have the right at any time during ordinary business hours to enter the premises and inspect the condition of the premises, buildings, structures, fixtures, and equipment. If after an inspection by Lessor, either with or without notice from the Lessee, Lessor determines that maintenance, repairs, or replacements are necessary, Lessor shall have the right to enter the premises and make the repairs; however, this right does not alter Lessee's duty to maintain, repair, and replace. If the maintenance, repair, or replacement was the Lessee's responsibility under subsection 4 (g) (2), Lessor shall have the right to invoice Lessee for the cost of the maintenance, repair, or replacement, and Lessee shall pay Lessor within twenty days of the date of the invoice. Lessor shall use its best efforts to minimize interference with the Lessee's business, and Lessor shall not be liable to Lessee for any loss of business. Any abatement of rent during repairs shall be at Lessor's sole discretion and shall be made by a refund to the Lessee after payment by Lessee of the contractually required rent.

6. Lessee recognizes that the premises have an intrinsic value as a motor fuel service station location and agrees to conduct his business thereon in such manner that its value as such will not depreciate, and in order to accomplish this purpose, Lessee covenants and agrees that he will furnish such services and accommodations to retail motor fuel customers as are customarily provided by motor fuel service stations, including, but not limited to, (1) keeping the premises open for operation not less than from __________ to __________ Monday through Saturday and __________ to __________ on Sundays, (2) keeping the premises, buildings, equipment, fixtures, rest rooms, sidewalks, approaches, and driveways in good condition, properly lighted, clean, safe, sanitary, and free of trash, rubbish, and other debris, (3) keeping the approaches, driveways, and service areas uncluttered and free of parked vehicles, trailers, and other obstructions, including ice and snow, at all times, (4) providing sufficient qualified and neatly dressed attendants to render first class service to customers, (5) rendering efficient, courteous, and diligent services to customers and not engaging in or permitting any improper act or conduct on the premises detrimental to Lessee, Lessor, or any member of the public, and (6) complying with all laws, ordinances, rules, or regulations of constituted public authority applicable to the use and occupancy of the premises and the conduct of the service station business.

7. Lessee agrees to exonerate, save harmless, protect, and indemnify Lessor from any and all losses, damages, claims, suits, or actions, judgments, and costs which may arise or grow out of any injury to or death of any person or persons or damage to any property caused by or in any manner connected with the use, possession, repair, or condition of the premises or any equipment or fixtures thereon except where such loss or damage is caused by sole negligence of lessor.

Lessee shall obtain and maintain at his sole cost, throughout the term of this Lease, insurance of the types and in the amounts as follows:

(a) Workmen's compensation insurance in accordance with the state laws and regulations applicable to and covering Lessee's employees as well as employer's liability insurance with the limit of liability of not less than one hundred thousand dollars ($100,000) per accident. The workmen's compensation and employer's liability insurance policy shall contain a waiver of subrogation in favor of Gulf Oil Corporation.

(b) Comprehensive garage liability insurance covering all operations, on or off the location, and including products/completed operations, contractual liability assumed under the indemnity provisions of this Lease, and automobile liability insurance covering all owned, non-owned, or hired vehicles used in the Lessee's business, all in amounts of not less than:

(1) a combined single limit for bodily injury and property damage of five hundred thousand dollars ($500,000) per occurrence; or

(2) three hundred thousand dollars ($300,000) per person and five hundred thousand dollars ($500,000) per occurence for bodily injury and one hundred thousand dollars ($100,000) for property damage per occurrence.

(c) Garage keeper's legal liability (including fire, explosion, theft, riot, civil commotion, vandalism, malicious mischief, and collision) for a limit of not less than fifty thousand dollars ($50,000).

Certificates evidencing the insurance coverages, specifically quoting the indemnity provision set forth herein, shall be delivered to Gulf prior to the effective date of this Lease. The certificates shall provide that any change restricting or reducing coverage or the cancellation of any policies for which certificates are issued shall not be valid with respect to Gulf Oil Corporation's interests unless Gulf Oil Corporation has received notice in writing of such change or cancellation at least thirty days prior to the effective date of the change or cancellation.

8. This Lease is personal to Lessee. Except as specifically provided by law, Lessee shall not have the right to assign or encumber Lessee's interest in this Lease or in the premises, or sublease all or any part of the premises, without Lessor's prior written consent, which consent will not be unreasonably withheld. Without limitation, each of the following acts shall be considered an assignment:

(a) Transfer of this Lease either by will or by operation of law upon the death of Lessee.

(b) Lessee's bankruptcy, insolvency, or assignment for the benefit of creditors.

(c) Attachments or any other legal proceeding levied or instituted against the premises by anyone other than Lessor, if not removed within ten days.

(d) The appointment of a receiver with authority to take possession of the premises.

9. The obligations and covenants of Lessee set forth in this Lease shall be deemed conditions. Lessor may, at its option, terminate, cancel, or nonrenew this Lease after notice to Lessee as required by law for any one or more of the following grounds:

(a) Failure by Lessee to comply with any provision of this Lease, which provision is both reasonable and of material significance to the relationship created by this Lease;

(b) Failure by Lessee to exert good faith efforts to carry out the provisions of this Lease;

(c) Occurrence of an event which is relevant to the relationship created by this Lease, and as a result of which termination, cancellation, or nonrenewal of this Lease is reasonable, including, but not limited to, events such as:

(1) Fraud or criminal misconduct by Lessee relevant to the operation of the premises.

(2) Declaration of bankruptcy or judicial determination of insolvency of Lessee.

(3) Continuing severe physical or mental disability of the Lessee of at least three months duration which renders the Lessee unable to provide for the continued proper operation of the premises.

(4) Loss of Lessor's right to grant possession of the premises through the expiration of an underlying lease.

(5) Condemnation or other taking of the premises, in whole or in part, pursuant to the power of eminent domain.

(6) Destruction (other than by Lessor) of all or a substantial part of the premises.

(7) Failure by Lessee to pay Lessor in a timely manner when due rent and all other sums to which Lessor is legally entitled.

(8) Failure by Lessee to operate the premises for seven consecutive days or such lesser period which under the facts and circumstances constitutes an unreasonable period of time.

(9) Knowing failure of Lessee to comply with federal, state, or local laws or regulations relevant to the operation of the premises.

(10) Willful adulteration, mislabeling, or misbranding of Lessor's motor fuels or other trademark violations by the Lessee.

(11) Conviction of the Lessee of any felony involving moral turpitude.

(12) Death of the Lessee.

(13) The occurrence of leaks from underground storage equipment and a determination by Lessor not to repair or replace the underground storage equipment, but to convert the property to other uses not including the marketing of petroleum products or to sell the property.

(14) Any other acts or omissions of Lessee which are relevant to the relationship created by this Lease.

10. In addition to the grounds for termination, cancellation, and nonrenewal of this Lease provided in section 9, Lessor may, at its option, nonrenew this Lease at the termination of the term hereof, after notices to Lessee as required by law, for any one or more of the following grounds, or any other ground permitted by law:

(a) The receipt of numerous bona fide customer complaints by Lessor concerning the Lessee's operation of the premises;

(b) The receipt of numerous bona fide customer complaints by Lessor concerning the conditions of the premises or the conduct of any employee of Lessee, if Lessee fails to promptly take action to cure or correct the basis of such complaints;

(c) The failure by Lessee to operate the premises in a clean, safe, and healthful manner.

11. Upon termination, cancellation, or nonrenewal of this Lease, Lessor may re-enter and in any lawful manner resume possession of said premises, operate them through employees, agents, or lessees, and Lessee hereby waives any claim against Lessor and the benefit of all statutory rights inconsistent herewith. In the event of such re-entry, Lessor may buy for its own account, or sell or store for the account of Lessee, any personal property and stock of Lessee then on the premises, and Lessee hereby appoints Lessor his agent for that purpose, and Lessor shall not be liable to Lessee in damages or otherwise for any act or omission of Lessor in regard thereto. Lessor may retain out of the proceeds of any sale any sums owing Lessor by Lessee, whether under this Lease or otherwise, (without releasing Lessee from the indebtedness except as to the amount so retained) and Lessor may at its discretion pay out of the proceeds or otherwise any taxes or contributions owed by Lessee which in the absence of payment would or might reasonably under applicable laws or regulations be an obligation of Lessee's successors or Lessor. Lessor may discharge any liens upon the goods, and Lessee shall reimburse Lessor for any payments in excess of the value of the goods.

12. In addition to the right to re-enter and repossess the premises, Lessor shall be entitled to all the remedies incident to the relation of landlord and tenant, and to the extent permitted by law, Lessee hereby empowers any attorney of any court of record to appear for him and confess judgment in ejectment, unlawful detainer, or other applicable form of legal action, with right of immediate writ of possession.

13. None of the provisions of this Lease shall be construed as reserving to Lessor any right to exercise control over the service station business and operations of the Lessee conducted upon the leased premises, or to direct in any manner how Lessee shall conduct his business. It is understood and agreed that Lessee is an independent businessman and that the entire control and direction of said activities shall be and remain in Lessee, and neither Lessee nor any other person employed by him shall be deemed or considered employees or agents of Lessor.

14. **This paragraph will apply if Lessor is not the owner of the leased premises.**

Lessor is not the owner of the leased premises but is currently holding the premises under a lease for a term ending ____________________, 19______ Lessee understands and agrees that the term of Lessor's lease might expire and not be renewed during or at the end of the term of this Lease and that this Lease and the estate created hereby are subject to all other terms and provisions and conditions of Lessor's underlying lease and, if for any reason, including the termination, cancellation,, or nonrenewal of the term of the underlying Lease, Lessor's tenancy is terminated, either with or without Lessor's consent, then this Lease shall be terminated as of the same date, without any liability on the part of the Lessor to the Lessee.

15. If the leased premises or any part thereof shall be condemned or taken for any public purpose or if Lessor agrees to execute a voluntary conveyance in lieu of condemnation, Lessor may forthwith terminate this Lease by written notice to Lessee, and Lessee shall not by virtue of this Lease be entitled to any damage award, or purchase price, or any part of either, which may be paid

16. All notices under this Lease must be in writing and may be delivered personally or sent by registered or certified mail and shall be deemed duly given if and when deposited in the United States mail, properly stamped and addressed to the Lessor or Lessee, as the case may be, at his or its address shown above or to such other address as either party may hereafter designate in writing to the other party or upon personal delivery.

17. This Lease contains the entire agreement between the parties relating to the subject matter hereof, and no agent or employee of Lessor has authority to change, modify, or add to this Lease, or to make any other or further agreements in connection therewith, except in writing signed by an authorized manager of Lessor. The right of the Lessor to insist upon the strict performance of the terms of this Lease shall not be affected by any waiver, forebearance, or previous course of dealing.

18. It is agreed that this Lease shall not become binding upon Gulf Oil Corporation until signed by an authorized manager thereof.

WITNESSES:

Gulf Oil Corporation

By ____________________

Title ____________________

GULF REFINING AND MARKETING COMPANY,
A DIVISION OF GULF OIL CORPORATION

____
LESSEE

EQUIPMENT SCHEDULE

PUMPS		
NO.	MAKE	MODEL

UNDERGROUND TANKS	
NO.	CAPACITY

LIFTS			
NO.	MAKE	TYPE	MODEL NO.

AIR COMPRESSOR		
NO.	MAKE	HORSE POWER

LUBSTERS	
NO.	CAPACITY

AIR STANDS	
NO.	MAKE

SIGNS	
NO.	TYPE

OTHER EQUIPMENT

Lessee may use Gulf's trademarks, brand names, and color schemes to identify and advertise Gulf branded products at Lessee's location in connection with any of the scheduled equipment; however, Lessee shall not sell under Gulf's identification, trademarks, or brand names any product not bearing the Gulf brand or any mixture or adulteration of any Gulf branded products with each other or with any other product or material. Upon request, Gulf shall have the right to enter the leased premises for the purpose of taking and recording the volume meter readings on any of the scheduled equipment through which Gulf branded products are dispensed.

ADDITIONAL EQUIPMENT RENTAL:

For and in consideration of the furnishing by Lessor to Lessee of additional equipment listed herein, Lessee agrees to pay to Lessor an additional rental of $ ______ for the following items:

(QUANTITY AND DESCRIPTION):

____

____

____

which rental is to be paid and collected in the same manner as specified in section 3 of the Lease and otherwise subject to all the terms and provisions of section 3; and the additional equipment is in all other respects subject to the terms and conditions of the Service Station Lease.

____
LESSOR MANAGER

____
LESSEE

Gulf Oil Corporation

DEALER CONTRACT OF SALE

THIS CONTRACT OF SALE made and entered into between GULF OIL CORPORATION, acting through Gulf Refining and Marketing Company, a Division of Gulf Oil Corporation, hereinafter called "SELLER" and

____

situated at____hereinafter called "PURCHASER."

WITNESSETH: THAT FOR AND IN CONSIDERATION OF the mutual promises herein contained, SELLER agrees to sell and deliver to PURCHASER, at the address designated above, and PURCHASER agrees to purchase and receive and to pay SELLER for Gulf petroleum products of the kinds and in the quantities and under the terms and conditions specifically set forth in Commodity Schedule(s) annexed hereto and made a part hereof.

EFFECTIVE DATE: This contract shall become effective on the__________day of____________________, 19____, and shall be subject to termination, cancellation, or nonrenewal in accordance with the Conditions mentioned below and the provisions of the Commodity Schedule(s) made a part hereof.

CONDITIONS: This contract is subject to the Conditions printed on the reverse side hereof. The following Commodity Schedule(s) forming a part of this contract were affixed at or before the signing hereof.

COMMODITY SCHEDULE	DATE

This contract may be amended from time to time by adding other or additional Schedules, substituting revised Schedules, or by deleting one or more items or provisions from any Commodity Schedule listed above. Additional and revised Schedules shall be so marked and initialed by an authorized Manager of SELLER and by PURCHASER and shall be affixed to and become a part of this contract from and after the date appearing on such additional or revised Schedule(s).

PURCHASER agrees not to engage in or permit any illegal or improper act or conduct, on or about the premises where Gulf identification is displayed and Gulf branded products are sold, which is detrimental to SELLER or any member of the public. At the option of SELLER, this contract may be terminated after written notice as required by law (1) upon the failure of PURCHASER to desist from any such further acts or conduct after written notice from SELLER to do so, or (2) upon PURCHASER'S failure to pay any amount when and as due, or (3) for any other reason allowable by law, and no forbearance, course of dealing, or prior payment shall affect these rights of termination. If at any time the financial responsibility of PURCHASER shall become impaired or unsatisfactory to SELLER, or should PURCHASER be in arrears in his accounts with SELLER, SELLER may require, as a condition of making further deliveries under this contract, payment by PURCHASER of all past due accounts and cash payment for all future deliveries.

THIS INSTRUMENT CONTAINS EACH AND EVERY AGREEMENT AND UNDERSTANDING EXISTING BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT, AND NO AMENDMENTS OR ALTERATIONS THERETO SHALL HAVE ANY EFFECT UNLESS MADE IN WRITING AND SIGNED BY AN AUTHORIZED MANAGER OF SELLER AND BY PURCHASER.

APPROVAL: This contract or any modification thereof shall not be binding upon SELLER until signed on its behalf by an authorized Manager of SELLER. Commencement of performance hereunder prior to signing as above stipulated in no case shall be construed as a waiver by SELLER of this requirement.

Executed as of the________day of________________19_____ Gulf Oil Corporation

By________________________________

Title______________________________

GULF REFINING AND MARKETING COMPANY,
A DIVISION OF GULF OIL CORPORATION

____
SALES REPRESENTATIVE

PURCHASER____________________________

[illegible]

CONDITIONS

1. **TAXES AND OTHER CHARGES** - It is agreed that there shall be added to the contract price specified, and PURCHASER will assume and pay, any and all internal revenue or war revenue taxes, duties, inspection fees, and any other charges that may now or hereafter be imposed by the federal government, or by any state, county, or municipality, or by any governmental authority, upon the products covered by this contract, or in respect to the importation, exportation, production, manufacture, storage, inspection, sale, use, handling, distribution, or transportation thereof or of this contract; provided that payment of such revenue, fee, duty, tax, or other charge by PURCHASER is legally permissible and does not duplicate a similar charge merged in the price specified. Should PURCHASER claim exemption from any such tax, inspection fees, or charges levied by any governmental authority with respect to the importation, exportation, production, manufacture, storage, inspection, sale, use, handling, distribution, of transportation of the commodities sold and purchased, PURCHASER shall furnish appropriate, completely executed exemption certificates, in accordance with the laws and regulations imposed by any governmental authority in effect at the time of sale; but should exemption be denied, all charges shall then be paid by PURCHASER.
2. **TRADEMARKS AND BRAND NAMES** - SELLER, in its discretion, may at any time change the brand name or distinctive designation of any of its products. Should it do so, this contract shall be deemed to cover each product of the new name or designation to the same extent as if the name or designation were specifically set forth herein.
   PURCHASER hereby acknowledges that Gulf indicia, including, without limitation, Gulf trademarks, service marks, names, displays, symbols, color arrangements, and other words and devices which identify Gulf Oil Corporation, its products, services, and goodwill, are valuable property rights belonging exclusively to Gulf Oil Corporation. Any use of such Gulf indicia by PURCHASER, including use on stationery, invoices, delivery tickets, equipment, in directory or other advertising, and the like, in connection with this contract is solely for the purpose of advertising the products or services, or both, of Gulf Oil Corporation. Upon termination of this contract, PURCHASER agrees that he will make no further use of any Gulf indicia or of any other indicia confusingly similar therewith. If PURCHASER has included the name 'Gulf' in his trade name or trade style during the term of this contract, PURCHASER further agrees upon termination hereof to change such trade name or trade style to eliminate the name 'Gulf' therefrom. The provisions of this paragraph shall survive any termination of this contract. After termination of this contract, nothing herein shall prevent the resale, in the normal course of business, by PURCHASER of packaged products bearing trademarks of SELLER.
3. **INVENTORY CONTROL** - PURCHASER recognizes that he has an obligation to protect the public and the environment and that he may incur significant liability as a result of leaks from underground storage tanks or the dispensing systems and agrees that he will maintain an inventory control system as follows;
   (a) PURCHASER shall make and record an accurate physical measurement each day of operation of the level of product and water in each tank;
   (b) At the same time, PURCHASER shall make and record pump meter readings;
   (c) PURCHASER shall then make a daily computation of gain or loss for each separate tank system, using the readings he has made and the delivery records which he has received;
   (d) PURCHASER shall immediately notify SELLER upon discovery of any product loss or gain which cannot be explained by spillage, temperature variation, or other cause not related to equipment management or maintenance and upon discovery of a change in water level of one inch or more;
   (e) Except if PURCHASER'S physical safety is threatened, he shall make readings and compute inventory gain or loss not less than once every seven days during periods of excused non-operation;
   (f) PURCHASER shall maintain these inventory control records for at least twelve months and shall make them available to SELLER or any legally authorized entity upon reasonable notice;
   (g) Compliance with these inventory control provisions shall not excuse PURCHASER from compliance with the requirements of any applicable laws or regulations and PURCHASER is solely responsible for his compliance with any applicable law or regulation.
4. Each party to this contract understands that stringent regulations of the Environmental Protection Agency (Title 40, Code of Federal Regulations, Part 80) require that where gasoline is marketed as "unleaded gasoline" the gasoline not contain more than 0.05 grams of lead per gallon at the retail level and that violation of the regulations may lead to imposition of substantial penalties on various persons. Specifications for SELLER'S "Gulfcrest" and "Super Unleaded" gasolines qualify them as unleaded gasolines. It is understood that if PURCHASER dispenses SELLER'S Gulfcrest or Super Unleaded gasoline, or both, under SELLER'S brand name, PURCHASER will assure to the maximum extent practicable that, while the product is in the PURCHASER'S custody and control, lead content of such gasoline will not exceed 0.05 grams per gallon by implementing, at a minimum, the following procedures and policies:
   (a) The return of all test samples taken for whatever purpose, to an underground tank for the storage and dispensing of leaded gasoline only;
   (b) Absolutely prohibiting and refusing dispensing of any product other than Gulfcrest unleaded gasoline or Gulf Super Unleaded gasoline from the underground tank(s) and pump(s) identified with the unleaded name or trademark and designated for that purpose;
   (c) The supervision, wherever possible, by the service station manager, or his designated representative, of each and every delivery of Gulf gasoline to his service station, to insure, insofar as practical, that the proper gasoline type is placed into the proper underground storage tank;
   (d) The daily monitoring of product levels in all underground storage tanks by the service station manager or his designated representative as required by condition 3 and the immediate notification to Gulf of any suspected shortage or excess of product or any other discrepancy or deviation from the PURCHASER'S contractual obligations to Gulf.
5. **DISCONTINUANCE OR SUBSTITUTION OF PRODUCTS** - SELLER reserves the right at any time to discontinue the sale of any product named herein in any geographical area selected by SELLER. Should SELLER do so, SELLER shall not thereafter be obligated to make deliveries hereunder of any discontinued product.
   Should SELLER sell in the geographic area in which deliveries are made to PURCHASER another product in place of the discontinued one, SELLER may substitute that product for the one discontinued if agreeable to PURCHASER.
6. **DELIVERIES DELAYED OR PREVENTED** - If the performance of this contract by either party is affected by strike, fire, riot, war, Act of God, governmental regulations, or governmental requests or requisitions for national defense or other purposes, or failure or shortage of railway, pipeline, or vessel service normally available to either party hereto, or breakdown of, or injury to, or shortage in, facilities used for the production, refining, or transportation of the products described herein, or of the crude oil or other raw material from which they are made, or any other cause beyond the reasonable control of the parties hereto, or either of them, whether similar to or dissimilar from the enumerated causes, the suffering party may, at its, his or their option, suspend or terminate the performance of this contract, in whole or in part, and no liability for damages shall attach against either party on account thereof. SELLER shall not be required to make up any deliveries omitted on account of any such cause.
7. **SHIPMENTS** - Claims regarding shortage in quantity shall be made at the time of delivery. Any claims regarding variance in quality of products delivered by SELLER shall be made within fifteen days after day of delivery.
   Should transportation equipment furnished by the SELLER be in bad order or leaking, the PURCHASER shall notify the carrier and secure examination by the authorized agent of the carrier as to the condition of the equipment before the equipment is unloaded.
   It is understood that if any claims are asserted by the PURCHASER hereunder, the SELLER shall be given an opportunity to promptly inspect the products or goods delivered and failure of the PURCHASER to comply with these requirements shall operate as a waiver of any and all claims by the PURCHASER.
8. **RISK OF LOSS** - Liability of SELLER ceases and title passes to PURCHASER when shipment is delivered to (railroad company, steamship company, or other public) carrier. When transportation is furnished by SELLER, SELLER'S liability ceases and title passes to PURCHASER when bulk product passes connection between SELLER'S delivery hose and PURCHASER'S receiving connection and when packages are delivered to destination specified in PURCHASER'S order when accepted by SELLER.
9. **UNLOADING DEMURRAGE** - It is agreed that no bulk shipments will be made in transport truck, tank cars, or vessels unless PURCHASER shall provide adequate facilities to receive such deliveries. PURCHASER shall promptly receive and unload shipments returning empty tank cars as instructed by SELLER. PURCHASER shall pay demurrage, car rental, charter hire, and all damages for the time any tank cars or vessels are held beyond forty-eight (48) hours after arrival at destination, Sundays and Holidays excepted.
10. **WAIVERS** - The failure of SELLER or PURCHASER to insist, in any one instance or more, upon the performance of any of the terms or conditions of this contract, or to exercise any right or privilege herein conferred, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, but the same shall continue and remain in full force and effect.
11. **NOTICES** - Any notice to be given hereunder shall be in writing and may be delivered personally or sent by registered or certified mail and shall be deemed to have been duly given if and when deposited in the United States mail, properly stamped and addressed to the party for whom intended at the address of such party herein specified, or to such other address as either party may hereafter designate in writing to the other party, or upon receipt when delivered personally.
12. **ENTIRETY OF CONTRACT** - No change, alteration, or erasure in the printed portions of this contract, and no additions to or interlineations therein, shall be binding upon SELLER unless approved in writing by an authorized Manager of SELLER.
    The counterpart of this contract held by SELLER shall be considered the original and shall be the binding contract in case of a variance in any particular between it and any other signed copy.
13. **ASSIGNABILITY** - This contract is not assignable except with the written consent of SELLER.

COMMODITY SCHEDULE

GASOLINE, NAPTHA, DISTILLATE AND RESIDUAL FUELS

PURCHASER ______________________________ DATE ______________________

PRODUCTS - Brands and Grades as shown below.

QUANTITY REQUIREMENTS AND LIMITS-PURCHASER shall be required to purchase the following minimum quantities on an annual basis in approximately equal monthly quantities upon reasonable notice to SELLER at

____

Good Gulf	Gulf Crest	Gulf Super Unl.	Diesel	Total Minimum Quantity	Other	Other

Unless SELLER has failed to make requested deliveries to PURCHASER, if PURCHASER fails (a) to purchase at least eight percent (8%) of the total minimum quantity of motor fuel in any calendar month, SELLER may, at its option, reduce sales to PURCHASER in future months to the quantity purchased in the prior month, or SELLER may terminate the Contract of Sale and all Commodity Schedules thereto upon written notice as required by law or (b) to maintain and offer for sale to the public adequate supplies of each grade of fuel for which a minimum quantity is shown on this schedule, SELLER may terminate the Contract of Sale and all Commodity Schedules thereto upon written notice as required by law. Failure of SELLER to exercise these rights on one or more occasions shall not constitute a waiver of these rights with respect to future violations. The provisions of this paragraph do not apply to product quantities listed in the columns headed "Other."

SELLER'S obligation to deliver the annual minimum volumes is subject to Conditions 5 and 6 of the Contract of Sale.

There is no maximum limit on PURCHASER'S monthly volume except that SELLER shall have sole discretion to determine if SELLER'S inventory requirements and supply system capabilities permit the delivery of any requested volumes in excess of the minimum monthly quantity.

Method of Delivery

Minimum Delivery

PRICE BASIS SELLER'S scheduled price in effect at time and for place of delivery.

TERMS OF PAYMENT—Cash on Delivery or ______________________________

____

PERIOD—This Commodity Schedule shall be effective for ______________ year(s) from date shown hereinabove and shall terminate at midnight on ______________, 19______, unless renewed in writing before that date. Any extension period, without this Commodity Schedule having first been extended or renewed in writing, shall not be considered as a renewal or extension of this Commodity Schedule for any period longer than one month. Either party may terminate this Commodity Schedule or the Contract of Sale and all Commodity Schedules upon termination for any reason of PURCHASER'S right of occupancy of the premises designated in the Contract or at the end of the period herein specified or at any time thereafter by giving the other party prior written notice as required by law of its intention to terminate.

GULF [illegible]

COMMODITY SCHEDULE

GASOLINE, NAPTHA,
DISTILLATE AND RESIDUAL FUELS

PURCHASER ______________________________ DATE ______________

PRODUCTS—Brands and Grades as shown below.

QUANTITY REQUIREMENTS AND LIMITS—PURCHASER shall be required to purchase the following minimum quantities on a monthly basis upon reasonable notice to Seller at ______________________________

____

	Good Gulf	Gulf Crest	Gulf Super Unl.	Diesel	Total Minimum Quantity	Other ______	Other ______
Jan.							
Feb.							
Mar.							
Apr.							
May							
Jun.							
July							
Aug.							
Sept.							
Oct.							
Nov.							
Dec.							

Unless SELLER has failed to make requested deliveries to PURCHASER, if PURCHASER fails (a) to purchase the total minimum quantity of motor fuel in any calendar month, SELLER may, at its option, reduce sales to PURCHASER in future months to the quantity purchased in the prior month, or SELLER may terminate the Contract of Sale and all Commodity Schedules thereto upon written notice as required by law or (b) to maintain and offer for sale to the public adequate supplies of each grade of fuel for which a minimum quantity is shown on this schedule, SELLER may terminate the Contract of Sale and all Commodity Schedules thereto upon written notice as required by law. Failure of SELLER to exercise these rights on one or more occasions shall not constitute a waiver of these rights with respect to future violations. The provisions of this paragraph do not apply to product quantities listed in the columns headed "Other."

SELLER'S obligation to deliver the monthly minimum volumes is subject to Conditions 5 and 6 of the Contract of Sale.

There is no maximum limit on PURCHASER'S monthly volume except that SELLER shall have sole discretion to determine if SELLER'S inventory requirements and supply system capabilities permit the delivery of any requested volumes in excess of the monthly minimum quantity.

Method of Delivery

Minimum Delivery

PRICE BASIS SELLER'S scheduled price in effect at time and for place of delivery.

TERMS OF PAYMENT—Cash on Delivery or ______________________________

____

PERIOD—This Commodity Schedule shall be effective for ______________ year(s) from date shown hereinabove and shall terminate at midnight on ______________, 19______, unless renewed in writing before that date. Any extension period, without this Commodity Schedule having first been extended or renewed in writing, shall not be considered as a renewal or extension of this Commodity Schedule for any period longer than one month. Either party may terminate this Commodity Schedule or the Contract of Sale and all Commodity Schedules upon termination for any reason of PURCHASER'S right of occupancy of the premises designated in the Contract or at the end of the period herein specified or at any time thereafter by giving the other party prior written notice as required by law of its intention to terminate.

[illegible]

RENTAL SCHEDULE

Effective as of the date stated below, this Rental Schedule is attached to and made a part of the Service Station Lease between the parties dated the _____ day of _______________, 19 _____, as provided in paragraph 3 thereof.

1. From _______________, 19 _____ to _______________, 19 _____, the rental shall be $ _________ per month to be paid to Lessor by Lessee, in advance, on or before the last day of the month preceding the month for which such rental is paid.
2. From _______________, 19 _____ to _______________, 19 _____, the rental shall be $ _________ per month to be paid to Lessor by Lessee, in advance, on or before the last day of the month preceding the month for which such rental is paid.
3. From _______________, 19 _____ to _______________, 19 _____, the rental shall be $ _________ per month to be paid to Lessor by Lessee, in advance, on or before the last day of the month preceding the month for which such retnal is paid.

Dated at _______________, _______________,
this _______________ day of _______________, _________.

GULF OIL CORPORATION

By _______________

Title _______________

Gulf Refining and Marketing Company,
A Division of Gulf Oil Corporation

____
Lessee

Gulf Oil Corporation

AUTOMOTIVE FUEL AGREEMENT
(DELIVERY AND STORAGE)

This Agreement, made this day of , 19 , between Gulf Oil Corporation, acting through Gulf Refining and Marketing Company, a Division of Gulf Oil Corporation, having a place of business at____, hereinafter called "Gulf", and______________________, whose address is____ hereinafter called "Dealer",

WITNESSETH:

WHEREAS, Dealer now owns, leases, or otherwise is in possession of and occupies those certain premises located at , which are designed to be used and employed in the operation of a retail automotive service station; and

WHEREAS, the parties hereto desire to provide for Dealer a readily available and adequate supply of automotive fuels and to relieve Dealer of the necessity of investing capital which is and otherwise would be represented by automotive fuel inventories;

NOW, THEREFORE, in consideration of the mutual promises and benefits each to the other flowing, it is agreed:

1. Dealer authorizes Gulf at any time while this Agreement is in effect to deliver automotive fuels into the storage tanks now located or later installed by Gulf at the premises in such quantities and at such time as Gulf sees fit, and further grants to Gulf full rights of egress and ingress at all hours for the purpose of making fuel deliveries. Gulf agrees to maintain at the location, unless prevented by circumstances beyond its control, sufficient volumes of fuel to always provide Dealer an adequate supply to meet the requirements of his trade for automotive fuels.

2. Dealer agrees to hold and care for all fuel delivered hereunder without compensation as the property of Gulf, it being understood and agreed that, until the fuel is purchased by Dealer as herein provided, title to all fuel shall be vested in and remain the property of Gulf.

3. Dealer shall at all times use due diligence to prevent loss or unauthorized withdrawals of fuel, but all overages of fuel shall accrue to and all shrinkages or other loss of fuel not occasioned by an act or omission of Dealer, his agents or employees, shall be borne by Gulf. For the joint protection of both Gulf and Dealer, it is agreed that Gulf may at any time during the term of this Agreement install locks or seals on storage tanks, meters, pumps, and computers situated on the premises for the purpose of further securing the fuel placed therein; and Dealer agrees that only those representatives specifically designated by Gulf will be permitted access to the storage tanks, meters, pumps, and computers and that Gulf's authorized representatives may inventory and inspect the stored fuel at any time.

4. Gulf retains the option of accepting payment for the fuel delivered hereunder or the return of the fuel as provided for herein. Dealer is authorized to sell the fuel to his customers in the ordinary course of his business at prices and on terms as Dealer shall determine, and it is agreed that title to the fuel shall pass to Dealer at the meters on the pumps. Dealer shall pay Gulf for all fuel so purchased and withdrawn by Dealer, when and as directed, Gulf's dealer-tankwagon price, plus all applicable federal, state, and local excise taxes, prevailing at the time and place of purchase and withdrawal by Dealer for the grade and quantity of fuel so purchased. Dealer, at the time of payment for fuel so purchased, shall also pay Gulf any gallonage rental due Gulf and any other indebtedness due Gulf, which is based upon gallonage, such rental or other payments to be computed on the quantity of fuel so purchased by Dealer in the manner as herein provided.

5. Gulf may, at the request of Dealer or as often as Gulf desires during normal business hours, gauge storage tanks and take pump readings to assist in invoicing Dealer for fuel so sold to him and may further audit Dealer's records of fuel stock if Gulf deems such audit necessary. It is understood, however, that Gulf has no control over the retail prices at which Dealer resells fuel to the consuming public and that any necessary inspection of Dealer's records shall be for the sole purpose of determining the quantities of fuel purchased by and delivered to Dealer.

6. The pumps, meters, and computers located upon the premises have been jointly checked by Gulf and Dealer and are believed to be accurate. Either party, at its own expense and upon prior notice to the other party, may at any time cause the pumps, meters, and computers to be inspected and repaired as needed; but all previous pump, meter, and computer readings shall be conclusively presumed between the parties to have been correct. Dealer agrees to give Gulf notice immediately of any defective condition of the pumps, meters, and computers.

7. Should Dealer refuse or fail to pay when and as directed by Gulf for all fuel purchased and withdrawn from storage by Dealer or should Dealer fail to pay Gulf for any gallonage rental due Gulf or any other indebtedness due Gulf which is based on gallonage, then in such event Gulf shall have the right to:

(a) Forthwith terminate this Agreement by written notice to Dealer and to lock the pumps to prevent further withdrawals from storage, or

(b) Suspend this Agreement by locking the pumps until Dealer has paid Gulf all monies due and owing to Gulf under this Agreement. If Dealer's obligation to Gulf hereunder is satisfied prior to written notice to Dealer of termination as above provided, this Agreement will be automatically reinstated and deliveries hereunder will be resumed.

The above remedies shall be deemed to be cumulative, and the election by Gulf of one remedy shall not preclude it from exercising any other remedy provided for in this Agreement or by law.

8. Upon termination of this Agreement, Dealer shall promptly

(a) Pay Gulf for all fuel purchased and withdrawn from storage by Dealer and then unpaid for by Dealer; and

(b) Deliver to Gulf all fuel delivered under this Agreement not so previously purchased by Dealer, or, with the consent of Gulf, purchase for cash the fuel from Gulf at Gulf's then prevailing tankwagon price therefor at Dealer's location plus all applicable taxes.

If Gulf elects to recover possession of the fuel, the fuel will be removed by Gulf from Dealer's storage tanks at the earliest practicable time.

9. Dealer agrees to furnish services and accommodations to retail fuel customers at such times as are customarily provided by service stations in Dealer's area having comparable facilities, and to use his best efforts to promote and increase the sale of Gulf fuel, and shall furnish all necessary facilities, tools, and equipment therefor. Dealer shall at his own cost furnish all labor and pay all expenses incident to his undertaking hereunder, including, but not by way of limitation, all contributions, assessments, taxes, fees, licenses, and other costs arising out of Dealer's business and upon his property.

10. Gulf is interested only in results in terms of increased volume of sales of Gulf's fuel; and the means, methods, and details are entirely within the discretion and judgment of the Dealer, who shall have entire charge and control of the management of his business in the accomplishment of the results.

11. Dealer agrees not to engage in or permit any illegal or improper act or conduct, on or about the premises where Gulf identification is displayed and Gulf branded products are sold, which is detrimental to Gulf or any member of the public.

12. Dealer hereby acknowledges that Gulf indicia, including, without limitation, Gulf trademarks, service marks, names, displays, symbols, color arrangements, and other words and devices which identify Gulf, its products, services, and goodwill, are valuable property rights belonging exclusively to Gulf. Any use of such Gulf indicia by Dealer, including use on stationery, invoices, delivery tickets, equipment, in directory or other advertising, and the like, in connection with this Agreement is solely for the purpose of advertising the products or services, or both, of Gulf. Upon termination of this Agreement, Dealer agrees that he will make no further use of the above Gulf indicia or any other indicia confusingly similar therewith. If Dealer has included the name "Gulf" in his trade name or trade style during the term of the Agreement, Dealer further agrees upon termination hereof to change his trade name or trade style to eliminate the name "Gulf" therefrom. The provisions of this paragraph shall survive any termination of this Agreement.

13. It is expressly agreed and stipulated that neither Dealer nor the employees of Dealer shall be deemed or construed to be or represent themselves to be employees of Gulf for any purpose, and Gulf assumes no responsibility for the acts or omission of Dealer, his servants or employees, in the management or operation of his business, negligent or otherwise; and Dealer hereby agrees to indemnify and hold Gulf harmless against any and all liability arising out of or in any way connected with such management or operation unless arising solely from Gulf's negligence. Dealer further agrees that he will carry adequate public liability and property damage insurance for himself and his employees, and comply with the applicable Workmen's Compensation laws.

14. This Agreement is for a period of one year from the date hereof and from year to year thereafter; provided, however, that Gulf may terminate or nonrenew this Agreement at any time if Dealer breaches any of the material terms or conditions of this Agreement, or for any other reason allowable by law, by giving the Dealer written notice required by law. Dealer may terminate or nonrenew this Agreement at any time by giving Gulf not less than thirty (30) days prior written notice. Such notice shall be delivered personally or sent by registered or certified mail and addressed to Gulf or Dealer, as the case may be, at its or his address shown in the caption hereof, or such other address as either party may designate in writing to the other for such purpose. Provided, further, that if for any reason Dealer's right of occupancy of the above described premises be terminated, this Agreement shall be considered terminated forthwith and Gulf may, without let or hinderance, go upon said premises and recover its property.

15. So long as this Agreement is in effect, the delivery and payment terms and the Risk of Loss provision in the Contract of Sale dated the   day of   ,19   , and any renewal thereof, shall be suspended until the termination or nonrenewal of this Agreement when the provisions of that contract with respect to delivery of, payment for, and risk of loss for fuel shall automatically become effective for all intents and purposes as fully as though this Agreement had never been entered into; provided, however, Dealer shall not have the right to purchase petroleum products under that contract unless Dealer pays Gulf in full for all fuel purchased and withdrawn from storage hereunder. If Dealer fails to pay such sum within twenty-four hours after this Agreement is terminated or nonrenewed, Gulf may, at its option, terminate that contract by giving Dealer written notice required by law.

16. If any provision of this Agreement shall be breached, then the party not at fault may forthwith declare the Agreement terminated. No waiver or forbearance of any breach shall be deemed to constitute a waiver of any subsequent breach.

17. This Agreement is nonassignable by Dealer without the prior written consent of Gulf.

18. This instrument contains each and every agreement and understanding existing between the parties relating to the subject matter of this Agreement, and no amendments or alterations thereto shall have any effect unless made in writing and signed by an authorized manager of Gulf and by Dealer.

19. It is agreed that this Agreement shall not become binding upon Gulf until signed by an authorized manager thereof.

20. Executed by and on behalf of the respective parties as of the day and year first above written.

Gulf Oil Corporation

By..

WITNESSES:

Title..

GULF REFINING AND MARKETING COMPANY
A DIVISION OF GULF OIL CORPORATION

....

....

....
Dealer

APPENDIX E.—ADDITIONAL COMMENTS FROM RUDY MOLNAR RE ARCO'S AM-PM MINIMARKETS

OFFICE: (215) 489-6400
WATTS: (800) 362-5695

Pennsylvania and Delaware
Service Station Dealers Association
3846 RIDGE PIKE
COLLEGEVILLE, PA. 19426

December 9, 1982

Honorable Berkley Bedell
Chairman
Subcommittee on Energy, Environment
and Safety Issues Affecting Small Business
b-363 Rayburn Office Building
Washington, D.C. 20515

Dear Congressman Bedell:

Thank you for the opportunity to testify before the subcommittee on December 1, 1982 and express the concerns of independent service station dealers in Pennsylvania in regard to the marketing practices of the major oil companies in the state.

As a follow up to the remarks I made in regard to the practices of Am-Pm MiniMarkets which include charging high prices for food to offset other operating losses, I have enclosed an article which appeared in the Pittsburgh Press. I believe the article is self-explanatory. However, I would draw your attention to the reference by representatives of Prestige Stations, Inc. to the fact that high markups on food are necessary for these stores to be profitable.

I feel this reinforces my statement that Arco is able to undercut its dealers because of this sort of subsidization in their company operations.

I would respectfully request that this letter and enclosed article be supplemented to my oral statement and made part of the hearing record.

Respectfully,

Rudy Molnar

Rudy Molnar
President

E-4 Pittsburgh Press, Thurs., Dec. 2, 1982

Firing Of Store Employees Stirs Controversy

By META McMILLIAN

The former manager of an East Liberty convenience store says he lost his job because he protested exorbitant markups of items sold there.

"They put the store here because it was in a black neighborhood, and because (the company) thought blacks don't pay attention to prices in their community," said Ernest Ruffin, who was fired one month ago as manager of the AM-PM MiniMart on Frankstown Avenue.

Ruffin, along with his wife, brother and 11 employees, has accused the store of unfair labor practices in a petition filed with the National Labor Relations Board.

Ruffin said items were marked up more than 55 percent over their value, when the average markup at other convenience stores is 39 percent.

Ruffin also charges that his firing resulted from his attempts to organize an employee union. Thirteen employees suspended indefinitely two days before Thanksgiving have joined Ruffin's complaint before the NLRB.

Since then, they have picketed the store and tried to organize a community boycott. The employees want to be reinstated and paid back wages.

Residents in Homewood and East Liberty have signed a petition calling for Ruffin's reinstatement also.

Representatives from Prestige Stations Inc., which leases the store from the Atlantic Richfield Co., contend such markups are necessary to remain profitable.

Gene Daudelin, PSI's eastern division manager in Philadelphia, said he did not learn of Ruffin's protests against the markups until he visited Pittsburgh this week to talk to employees.

He said Ruffin was fired because the store sustained huge inventory and cash losses under Ruffin's management.

If the employees' claim of unfair labor practices is justifiable, a formal complaint will be issued. The complaint is needed before a lawsuit is filed, said Janet Harner, an NLRB attorney.

But Ruffin, who had managed the store since its February opening, said he no longer wants his job back. He wants personal vindication.

"I want compensation for the defamation of my character," said Ruffin, who is seeking

$20,000 in damages.

"It was an unfair labor practice," Ruffin said of the suspensions. "They shuffled employees out and brought in more workers because (the former employees) didn't have a union."

Ruffin said he was rebuffed in his attempts to stock shelves with products used by blacks, including black-oriented magazines.

Daudelin said monthly statements received by his office indicated the store was losing cash in excess of $8,000 a month under Ruffin's management and that losses sometimes topped $30,000.

He said that while he is not accusing the employees of theft, they are responsible for the store's losses.

Daudelin said convenience stores commonly lose between $30 and $10,000 a month. But he added that since Ruffin was fired, the store's losses have been even heavier.

Ruffin argues that the store's losses resulted through normal channels, consumer thefts and vendors failing to deliver products.

"Why don't they talk about the profits?" Ruffin asked. He said he deposited more than $200,000 in the bank every month for the company.

Daudelin was accompanied to Pittsburgh by the company's employee relations director, Chris Applegate, and Philadelphia attorney Alan Symonette.

Daudelin said he has reinstated two of the suspended employees because they did not have access to cash or inventory.

He said he has been unable to contact the other suspended employees, and that no decision has been made on whether his company will make further attempts to reach them.

APPENDIX F.—ADDITIONAL COMMENTS SUBMITTED BY DAVID LAUFER FOR CALIFORNIA ARCO DISTRIBUTORS, INC.

LAW OFFICES
SHAPIRO, LAUFER, POSELL & CLOSE
A PROFESSIONAL CORPORATION
ONE CENTURY PLAZA, SUITE 2600
2029 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067

MITCHELL S. SHAPIRO
DAVID LAUFER
RICHARD E. POSELL
RICHARD H. CLOSE
KENNETH P. ROBERTS
ROCHELLE BUCHSBAUM SPANDORF
MINDA R. SCHECHTER
DOUGLAS L. CARDEN
JAMES H. LEHR
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TELEX NUMBER:
664999
OF COUNSEL
RAYMOND WALLENSTEIN
A PROFESSIONAL CORPORATION

December 10, 1982

The Honorable Berkley Bedell,
Chairman
House Small Business Committee
B-363 Rayburn House Office Building
Washington, D. C. 20515

Re: Supplemental Statement of
California Arco Distributors, Inc. ("CADI")
Hearings December 1 and 2, 1982

Dear Congressman Bedell:

California Arco Distributors, Inc. ("CADI") would like to supplement its statement of December 1, 1982, by including the following facts, which serve to clarify the statement made by Jack Findlay, President of CADI.

The National Petroleum News (NPN) Factbook Issue, for the year 1971 discloses that Atlantic Richfield Company ("Arco") had 1,103 branded jobbers, 107 salary operated bulk plants, 993 commission operated bulk plants, 445 jobber operated bulk plants and 120 salary operated terminals in operation in the United States in 1971 (copy enclosed).

NPN's Factbook Issue dated mid-June, 1981, compiling Arco's statistics as of December 31, 1980 (see footnote (AA) on p. 34) discloses that Arco had 1,144 branded jobbers, 2 commission agents, 0 bulk plants, and 52 salary operated terminals operating in the United States as of December 31, 1980 (copy enclosed).

Arco's AM/PM Franchise Offering Circular dated October 1, 1981 provides:

> "As of October 1, 1981, Company was a party to approximately 2,990 leases with lessee dealers, 1,860 contracts with contract dealers, and 271 contracts with distributors in the United States." Arco UFOC at p. 6 (enclosed) (emphasis added).

In the October 4, 1982 issue of The Wall Street Journal, an Arco representative is reported to have said that there are 27 Arco branded distributors doing business in California and 153 branded distributors doing business in the remainder of the United States, for a total of 176 (copy enclosed).

These data verify that in 1971 Arco had approximately 2,000 wholesalers, which have been reduced in 1982 to less than 176. (See enclosed chart entitled, "Arco Distributor Population"). Arco's factual statement to your Committee on the number of wholesalers was, therefore, clearly erroneous. (See U.S. Dept. of Energy study (June, 1980), "Petroleum Marketing: The Distributor Industry", enclosed).

Your Committee also raised a series of questions concerning Arco's payment of windfall profit taxes and questioned whether or not transportation charges and crude oil pricing affected the amount that Arco paid in windfall profit taxes. I enclose for the Committee's review Arco's third quarter report (September 30, 1982), which discloses that Arco's windfall profits tax payments in 1982 on north slope crude fell from $5.16 a barrel to $1.75 a barrel. In the same time period, Arco's transportation income rose from $515,000,000 to $561,000,000.

Arco's quarterly statement provides:

> "Refining and marketing pretax earnings were up 24% in the third quarter, totaling 277 million, compared with 223 million in the third quarter of 1981. Third quarter 1982 results essentially equaled total earnings contributed by refining and marketing operations for the first half of 1982. For the nine-month period, refining and marketing pretax earnings increased 83%, to 550 million, compared to 301 million for the first nine months of 1981...." (emphasis added)

It is interesting to note that Arco's aggregate tax burden declined from $3,072,000,000 to $2,656,000,000.

I also enclose an article from the December 9, 1982 edition of the Los Angeles Times, which discloses the disparity in Arco's north slope crude prices compared to other north slope producers.

CONCLUSION

CADI believes that the testimony of all witnesses appearing before your Honorable Committee demonstrates that Arco's conduct unlawfully eliminated approximately 1,700 wholesalers in a period of less than two years. CADI believes that Arco's conduct is unlawful and deserves immediate remedial action from the Department of Justice, as well as the Federal Trade Commission.

CADI wishes to express its thanks to you, the Committee members and the Committee staff for the opportunity to testify on behalf of the remaining Arco distributors doing business in the United States.

Sincerely yours,

David Laufer
DAVID LAUFER

DL:dn:G
encs.

cc: Marc H. Rosenberg, Staff Director

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OF COUNSEL
RAYMOND WALLENSTEIN
A PROFESSIONAL CORPORATION

January 7, 1983

The Honorable Berkley Bedell
Chairman
House Small Business Committee
B-363 Rayburn House Office Building
Washington, D. C. 20515

Re: California Arco Distributors, Inc. ("CADI") v.
Atlantic Richfield Company ("Arco")

Dear Congressman Bedell:

Enclosed please find a copy of the Declaration of Jim Campbell, which conclusively establishes that there are at least two competent witnesses to corroborate CADI's allegations that Arco has planned since at least 1975 to eliminate Arco's branded wholesalers.

Jay Kowal is currently Arco's Manager for Commercial and Distributor Sales and has appeared before Congressional committees on the issue of Arco's existing plans to eliminate Arco branded wholesalers.

We believe that this new evidence, together with that previously forwarded to you, requires an immediate full-scale governmental investigation, which we believe will substantiate the charges made by CADI that Arco is determined to eliminate Arco branded wholesalers as soon as possible.

Kindly give this matter your immediate and urgent attention.

Sincerely yours,

David Laufer

DAVID LAUFER

DL:dh:B
enc.

cc: The Honorable William French Smith, Attorney General
of the United States
The Honorable James C. Miller, III, Chairman, Federal
Trade Commission

(SPACE BELOW FOR FILING STAMP ONLY)

LAW OFFICES
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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CALIFORNIA ARCO DISTRIBUTORS, INC., et al.,
Plaintiffs,
vs.
ATLANTIC RICHFIELD COMPANY, et al.,
Defendants.

Case No. C 423917

DECLARATION OF JIM CAMPBELL

JIM CAMPBELL, being duly sworn, deposes and states as follows:

1. I have personal knowledge of the information stated in this affidavit and of the facts and circumstances relating thereto, and, if sworn as a witness, can testify competently thereto.

2. I am the Executive Director of the California Service Station Association and have held that position since 1974.

3. While attending a legislative hearing in Sacramento,

California concerning the then-proposed enactment of Cal. Bus. & Prof. Code § 21200, I had a conversation with Atlantic Richfield's in-house legal counsel, Jay Kowal. During the conversation, Mr. Kowal indicated that it was Atlantic Richfield's intent to eliminate all of its wholesale distributors because Atlantic Richfield believed that there was no longer any need for them. Mr. Kowal further stated that none of Atlantic Richfield's wholesale distributors would still be in business within one year after decontrol of the petroleum industry by the federal government. To the best of my recollection, this conversation occurred sometime during 1975.

4. This conversation was also witnessed by John Hawkins, an attorney representing the California Service Station Association.

Executed this 27 day of December, 1982, at Alamo, California.

I declare under penalty of perjury that the foregoing is true and correct.

Jim Campbell

JIM CAMPBELL

AtlanticRichfieldCompany Legal
515 South Flower Street
Mailing Address: Box 2679 - T. A.
Los Angeles, California 90051
Telephone 213 486 2452

Richard C. Morse
General Attorney

DEC 27 1982

December 21, 1982

Kenneth P. Roberts, Esq.
Shapiro, Laufer, Posell
& Close
One Century Plaza Suite 2600
2029 Century Park East
Los Angeles, California 90067

Re: California ARCO Distributors Inc. vs. Atlantic Richfield Company

Dear Mr. Roberts:

I am in receipt of your letter of December 7, 1982 addressed to Paul J. Richmond. As a preliminary matter, all of the issues you discuss are objects of litigation brought by you. Nevertheless, to the extent that you seem bent on trying your case in Congress, please permit me to set the record straight.

As I sat at Mr. Babikian's side during his testimony, I was not aware that you were present, although I saw Mr. Laufer of your firm. My direct observation is quite contrary to your hearsay rendition of the proceedings.

For example, Mr. Babikian did not say, nor could any reasonable inference be drawn from his testimony, that he "admitted" that one of the reasons for Atlantic Richfield's "refusal" to deliver ARCO branded gasoline to ARCO distributors such as Cox Oil was because of a "mid-1970's plan" to emphasize market expansion through direct retail outlets. You know it not to be true, because ARCO has not refused to supply ARCO distributors.

First, there was no admission, because there has been no refusal.

Second, there was no "mid-1970's" plan germane to the hearing other than the massive capital programs to upgrade our refineries; and the program of selective market withdrawal through DOE allocation reassignments and property sales.

Third, the shopworn allegation of moving to subsidiary service station operations is just that... an overworked red-herring. Operating a total of approximately 400 stations, of which about 150 are temporary operations to test their economic potential as independent lessee stations, hardly constitutes a planned emphasis. They are, in any case, the same stations--whether dealer or company operated. Hence, they demand the same volumes, and would not require "new" volumes necessitating any change in sales to distributors.

Mr. Babikian did say that since eliminating ARCO's credit card in April, 1982, ARCO distributors had been permitted to lift the maxima in their contracts, but no more. He fully explained that this limit was necessary, because with a highly advantageous price, those distributors could "run the system dry."

Distributors take delivery of gasoline at terminals in their own or common carrier bulk delivery trucks, which gives them total flexibility in delivery destinations. They could therefore, draw virtually infinite amounts in excess of their customers' needs, and "broker" that volume to other dealers or distributors. Consequently, because of Atlantic Richfields finite supply, to permit unrestricted sales to distributors would leave insufficient gasoline for independent ARCO dealers entitled to supply.

By contrast, ARCO dealers receive deliveries into their underground storage. The practical limitations of their storage capacity, delivery schedules, their needs to conduct ongoing retail business, and the fact that their buying prices are higher than distributors', preclude their potential to "run the system dry."

The Honorable Berkeley Bedell asked obvious follow-up questions to testimony of a self-interested spokeman who had accused this company of manipulating crude oil prices to diminish Windfall Profits Taxes. The responses to those questions were fully dispositive of the fact that there has been no such manipulation. Instead, Mr. Babikian testified that Atlantic Richfield establishes crude oil prices and pays taxes on values fully consistent with federal and state requirements. He stated that each of the elements of transportation related to the determination of the Alaskan crude oil price is its market value, none of which is susceptible of Atlantic Richfield's "manipulation." I informed Congressman Bedell that the $600,000,000 figure provided by Mr. Blum did not apply to the Alaskan crude oil, as Mr. Blum had asserted. Moreover, I demonstrated to the committee that the reduction in Windfall Profits taxes paid in 1982 versus those paid in 1981 was attributable to the simple facts that the price of crude oil had fallen between those periods, while the base prices above which taxes are payable had risen. I committed to provide the committee with a detailed explanation of the Windfall Profits Tax calculation, and the causes of the different tax liabilities between those two periods.

Quite the contrary to having admitted that ARCO's branded distributors had had volumes "drastically reduced" because of sales at retail stations following the April 15, 1982 credit card decision. Mr. Babikian testified that the average ARCO distributor during 1981 had lifted only 70% of their contract volumes, whereas subsequent to the credit card elimination, those same branded distributors had lifted more than 90% of their contract volumes. Mr. Babikian testified that Atlantic Richfield had made spot market purchases of motor gasoline in order to satisfy its customers' demands, which obviously include demands of its branded distributors, particularly since those distributor's demand had increased by nearly 30%.

While your client, Mr. Findlay, alleged that Atlantic Richfield's number of wholesalers had diminished from approximately 2,000 in 1972 to approximately 176 currently, Mr. Babikian testified that never in Atlantic Richfield's history had there been 2000 branded distributors. Instead, it was never more than approximately 450. Of that number, the vast majority of the reduction was attributable to market withdrawal. In that context Mr. Babikian reminded the committee that Atlantic Richfield discontinued marketing in two thirds of the area in which it once did. When we withdrew from the State of Texas alone, 130 distributors were reassigned to other suppliers.

Finally, the House Small Business Committee made no findings. Instead, Chairman Bedell explicitly stated that the Committee was engaged in overview hearings. It was not bent on making findings. Since Congressman Bedell and Congressman Hiler were the only participants for the vast majority of the proceedings, it could hardly have been in a position to make findings from the podium. In any case, it did not. Moreover, Congressman Bedell did not assert that even he had concluded that Atlantic Richfield or any other refiner was engaged in "predatory practices designed to eliminate the independent branded wholesale class of trade."

While Atlantic Richfield cannot speak for other refiners, certainly as to itself there was not, and could not be a finding of predatory practices or any design to eliminate independent branded wholesale purchasers. Similarly, there could not be any finding that the elimination of that class of trade is a likely consequence of Atlantic Richfield's practices.

In deed, when and if your firm ever permits Atlantic Richfield to examine the financial books and records of the plaintiff's in the above captioned action, those accounts will definitively prove that Atlantic Richfield's current marketing practices have resulted in greater profitability and viability of that class of trade than existed prior to the adoption of the marketing practices of which you so vigorously complain.

Very truly yours,

Richard C. Morse

RCM/m
cc: P.J. Richmond, Esq.

D.C. Smaltz, Esq.

The Honorable Lowell Weicker, Chairman
Senate Small Business Committee

The Honorable Berkeley Bedell, Chairman
House Small Business Committee

The Honorable William French Smith,
Attorney General of the United States

[Note.--Supporting documentation retained in committee files.]

APPENDIX G.—ADDITIONAL INFORMATION SUBMITTED ON BEHALF OF NATIONAL ASSOCIATION OF TEXACO WHOLESALERS

natw
National Association of Texaco Wholesalers, Inc.
6551 Loisdale Court/Suite 608/Springfield, Virginia 22150/(703) 922-9784/9785

December 21, 1982

Mr. Marc Rosenberg
Subcommittee on Energy, Environment, and
Safety Issues Affecting Small Business
Room B-363 Rayburn HOB
Washington, D.C. 20515

Dear Marc:

The following information was provided by Mr. J. E. Meintzer, Jr., Easton, Maryland as per lines 2072-2074 of his oral testimony before the Committee on December 1, 1982. Shown below are posted street prices for motor gasoline at major oil company direct supplied service stations in the Baltimore, Maryland area on December 1, 1982.

Baltimore, MD Area Direct
Supplied Service Station Motor
Gasoline Prices Per Gallon, December 1, 1982

		Regular Leaded	Regular Unleaded
TEXACO	Location #1	$1.059	$1.119
	#2	$1.059	$1.129
	#3	$1.079	$1.129
EXXON	Location #1	$1.079	$1.139
	#2	$1.119	$1.179
	#3	$1.079	$1.139
SHELL	Location #1	$1.079	$1.139
	#2	$1.069	$1.169
	#3	$1.069	$1.119

		Regular Leaded	Regular Unleaded
AMOCO	Location #1	$1.079	$1.129
	#2	$1.079	$1.129
	#3	$1.069	$1.139
ARCO	Location #1	$1.069	$1.119
	#2	$1.059	$1.099
	#3	$1.069	$1.099
MOBIL	Location #1	$1.069	$1.129
	#2	$1.089	$1.149
	#3	$1.069	$1.139

Wholesale Motor Gasoline Prices of Texaco Charged to J. E. Meintzer & Sons, Inc.
Easton, MD, December 1, 1982

	Regular Leaded	Regular Unleaded
Meintzer Prices at Baltimore, MD rack	$1.055	$1.095
Freight to Easton, MD	$ .0175	$ .0175
Meintzer Total Buying Price	$1.0725	$1.1125

Texaco Baltimore, MD Dealer Tank Wagin (DTW) Prices for Motor Gasoline on December 1, 1982
(Prices charged to direct delivered dealers)

	Regular Leaded	Regular Unleaded
Baltimore, MD DTW Prices Delivered	$1.115	$1.155
Average Rebate *	$ .051	$ .051
Average Dealer Buying Price	$1.064	$1.104

* Obtained from office of Washington, D.C. Division, Texaco, U.S.A.

In December, 1982, rebate is based on the following: 6¢ after reaching 50% of base period volume; an additional 1.5¢ retroactive to first gallon after reaching 100% of base period volume.

Reference 2834-2847 of the testimony of Mr. Meintzer and Mr. J. Patrick Hickey. The attached copy of a letter sent to Texaco, Inc. by a Texaco distributor in Tampa, Florida exemplifies how Texaco is taking away its distributors consumer (commerical) accounts by bidding on them at prices below those afforded its distributors. Mr. Capitano is the President of the Florida Petroleum Marketers Association and advises that this practice has become quite prevalent in that state. This is the only document I have seen that presents specifics. However, in a survey conducted by NATW in September, 1982, 53% of the NATW members who responded indicated that Texaco had taken some of their accounts by selling to them at prices below those charged to its distributors. Whether they were referring to service station or commercial/consumer accounts is unknown since names were not indicated on survey form returns.

It is requested that the information provided herein and attached be placed in the record at the appropriate spot in the testimony of Mr. Meintzer and Mr. Hickey.

Sincerely,

Tom West
Executive Director

TFW/lcr

Enclosures: Letter, Radiant Oil Company to Texaco, Inc., June 29, 1982

RADIANT OIL COMPANY OF TAMPA, INC.
DISTRIBUTOR TEXACO PETROLEUM PRODUCTS

NICK CAPITANO
President
JOSEPH CAPITANO
Secretary-Treasurer

TEXACO

P. O. BOX 5751
TAMPA, FLORIDA 33605

June 29, 1982

Mr. Al Derden
Texaco Inc.
P. O. Box 20734
Orlando, FL 32814

PERSONAL

Dear Al:

In the past I have complained about your #2 Diesel price in Tampa as opposed to your #2 Diesel price in Port Everglades. I want to bring to your attention a serious injustice between your consumer #2 Diesel price and your jobber #2 Diesel price. Please note that Texaco's sales people are underbidding competition by as much as 1 1/4¢ per gallon on transport business in the State of Florida.

I am sure there must be a very good explanation as to why a consumer account is able to buy #2 Texaco Diesel for .9025¢ per gallon and Texaco jobbers must pay .95535¢ including discount. The only explanation your sales people would give me was that they had to meet Gulf to get this type of business. You might not be aware, but we jobbers must also compete with competition. It is my understanding that Gulf quoted .9145¢ per gallon, Amoco bid .9420¢, Chevron - .9455¢ and Exxon - .9555¢. I suspect that this kind of price discrimination between your jobber's cost and consumer's cost is unfair and possibly illegal. Your effort in helping with this type of unfair treatment would certainly be appreciated.

A year ago under controls (DOE) you got rid of all off schedule pricing accounts by forcing them on to your jobbers. Today, because of low consumption, you have gone after this business at .053¢ below jobber cost. How can you expect loyalty from your jobbers? Our loyalty to Texaco has certainly gained us no loyalty from Texaco. These conditions make it impossible to purchase #2 Diesel from you and remain in business very long --- WE need help now.

Sincerely yours,

Nick Capitano

cm

APPENDIX H.—RESEARCH ABSTRACT PREPARED BY DREXEL BURNHAM LAMBERT, INC.

SVN

Research Abstracts

PETROLEUM 4389

ATLANTIC RICHFIELD (ARC-43 5/8)
Redetermination A Welcome Development; Earnings Models; Third-Quarter Results

Joel D. Fischer
(212) 480-7162

November 10, 1982

Rating:	BUY (1)	Common-equivalent shares outstanding:	255 million
52-week range:	50-32	Dividend: $2.40 Yield:	5.5%
EPS 1981A	$6.66	P/E 1981A	6.6
1982E	$6.70	1982E	6.5
1983E	$7.50	1983E	5.8
Projected 5-year growth rate:	13.1%	Operating return on tangible assets:	17.0%
Market proxy expected return:	15.6%	Total debt/equity:	90.8%
Expected return:	16.2%	Return on equity:	19.8%
Market cycle beta:	1.58	Reinvestment rate:	13.3%

POINT OF VIEW

ARCO's recently increased claim upon Prudhoe Bay production provides a welcome boost to its near-term prospects, given the dour outlook for chemicals, hard minerals and metal fabricating. The company's already outstanding domestic production profile, as compared to other integrated majors, has been strengthened by the redetermination of equities in Prudhoe Bay reserves. Its improved crude sufficiency will also add to already formidable downstream strengths. We caution, however, that ARCO's vigorous exploration effort will continue to constrain near-term earnings gains; ARCO is looking beyond Prudhoe Bay and Kuparuk. We also caution that earnings will probably be down this quarter from a year ago because of sharply lower nonoperating income. We do not share the current anxiety that Kuparuk output, important to ARCO, may be made subject to windfall tax to protect the constitutionality of that levy. In any event, even if its present exemption were removed, wellhead value would have to rise by over $3 a barrel before Kuparuk output would be subject to windfall tax at the preferentially low rate for newly discovered oil.

We continue to recommend purchase of ARCO common as a core holding among the domestics. We believe that the stock remains cheap relative to market on a variety of criteria (relative P/E, discount from resource value, and expected return) and affords a superior hedge against upheaval in the Middle East. ARCO carries our highest rating, BUY (1).

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Drexel Burnham Lambert Incorporated 60 Broad Street New York, New York 10004 (212) 480-6000

ATLANTIC RICHFIELD (Continued)

probably remain close to the third quarter's $265 million. Fortunately for current-quarter comparisons, exploration expense had soared to $282 million in the final quarter of 1981.

ESTIMATES

ARCO's prices for Prudhoe Bay and Kuparuk crude in September were $18.65 a barrel and $16.90 a barrel. We estimate the current prices at $19.65 and $17.90. Our current models of fully-taxed production earnings follow.

	Prudhoe Bay	Kuparuk
Wellhead price	$19.65	$17.90
Severance tax	2.95	1.43
Windfall tax	1.88	-
Ad valorem tax	0.25	0.25
Operating cost	0.50	2.00
Depreciation	0.75	3.00
State income tax	1.25	1.05
Federal income tax	5.55	4.68
Earnings per barrel	$ 6.52	$ 5.49

Ex downstream effects, the impact of redetermination upon current-quarter results will encompass incremental earnings on crude production, reimbursement of Sohio for past excess operating and maintenance costs, the cost of purchasing additional TAPS access, and incremental marine earnings. We estimate that by year-end ARCO will have reimbursed Sohio for three-quarters of $35 million of past operating and maintenance costs. ARCO's equity of 21.35% in TAPS is inadequate to accommodate its current access to 395 TB/D of North Slope crude; we estimate that ARCO is therefore purchasing 51 TB/D of throughput. We (boldly) allow for incremental pretax marine earnings at $0.50 per barrel on 55.5 TB/D.

	Pretax Contribution	Aftertax Contribution
	(Millions of dollars)	
Wellhead earnings	$68.0	$33.3
Cost reimbursement	(26.2)	(14.2)
TAPS access	(27.0)	(14.6)
Marine	2.6	1.4
	$17.4	$ 5.9

Fortunately, the drain of cost reimbursement is a one-time burden. We estimate the benefit to refining and marketing from increased crude-sufficiency at $3 per barrel or

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PETROLEUM 4392

ATLANTIC RICHFIELD (Continued)

Contribution By Segment
(Millions of dollars)

	Three Months to Sept. 30		Nine Months to Sept. 30	
	1982	1981	1982	1981
Exploration & production	$ 585	$ 679	$1,916	$1,929
Transportation	192	166	561	515
Refining & marketing	277	223	550	301
Total petroleum	$1,054	$1,068	$3,027	$2,745
Chemicals	(25)	(17)	(39)	27
Minerals (a)	(74)	(77)	(200)	(156)
Metal fabricating	(31)	22	(35)	77
Operating profit	$ 924	$ 996	$2,753	$2,693
Interest	(103)	(95)	(307)	(246)
Other corporate items	(72)	(66)	(277)	(254)
Pretax income	$ 749	$ 835	$2,169	$2,193
Income taxes	302	401	927	992
Net income	$ 447	$ 434	$1,242	$1,201
EPS	$1.76	$1.73	$4.91	$4.80
Windfall tax	$ 194	$ .292	$ 650	$1,125
Exploration expense:				
U.S. oil & gas	$ 226	$ 165	$ 619	$ 531
Foreign oil & gas	$ 39	$ 14	$ 85	$ 42
ITC	$ 42	$ 42	$ 123	$ 108
Effective tax rate	40.4%	48.1%	42.7%	45.2%

TRANSPORTATION COSTS

(a) Includes coal

Production earnings were down 14% from 1981 despite the benefit to 1982 results from 61 TB/D of Kuparuk production. Currently more profitable Prudhoe Bay output was up 5 TB/D or nearly 2% but Lower-48 output declined 17 TB/D or 7.5%. The major causes of the earnings decline were an increase of 48% in worldwide exploration expense, from $179 million to $265 million, higher depreciation and depletion charges, and an advance from 11.6% to 15% (effective July 1, 1981) in the Alaskan state severance tax on Prudhoe Bay production. (The effective rate of severance tax on Kuparuk output is about 8%.)

The adverse impact of lower realizations for crude was substantially cushioned by a steep decline in windfall profits tax, from $292 million to $194 million. While ARCO's

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ATLANTIC RICHFIELD (Continued)

Increased pipeline throughput in Alaska was the major source of an advance of 16% in transportation earnings, from $166 million to $192 million. Tanker movements were larger too. Transportation had contributed $186 million in the second quarter.

The contribution of refining and marketing expanded from $223 million to $277 million or by 24%. In the second quarter, it had been $153 million. Third-quarter results included a pretax LIFO profit of $46 million vs. one of $30 million a year ago and $45 million in the second quarter. Exclusive of LIFO profit, downstream results in the third quarter were the best in ARCO's history. Operating profits peaked in August.

ARCO has made effective use of its highly efficient refineries and its advantageous access to economical crude streams, including its own low-cost North Slope output and purchased Mayan supply from Mexico. It ran its refineries above rated capacity (647 TB/D) during the third quarter and aggressively went after market share with a low-price strategy. Crude runs averaged 672 TB/D vs. 627 TB/D in 1981 and 624 TB/D in the second quarter. Accompanying runs of unfinished stock were 18 TB/D vs. 51 TB/D in 1981 and 49 TB/D in the second quarter. Product sales averaged 676 TB/D vs. 626 TB/D in 1981 and 663 TB/D in the second quarter.

As noted, results in chemicals, minerals extraction and metal fabricating were disastrous. ARCO has done an impressive job in bringing down its breakeven price for copper from $1.25 per pound to an estimated $0.95. Unfortunately, its average sales price for copper was down 19 cents a pound from 1981 during the third quarter, from 78 cents to 59 cents. With the aluminum markets weak and growing weaker, Anaconda Aluminum's realization for ingot slid from 75 cents a pound to 50 cents; export demand was dead.

Coal was the one bright feature of minerals operations, with shipments up to 4.9 million tons (as in the second quarter) vs. 4.0 million tons in 1981. Output from the Black Thunder mine in Wyoming reached 4.3 million tons in the third quarter vs. 3.7 million tons a year ago.

A decline of 7.7 percentage points in ARCO's effective tax rate reflected a drop in the Alaskan state income tax rate from 11% to 9.4% and the inclusion in pretax income of the tax-free gain of $38 million from the stock-for-debt swap.

Our last Abstract on ARCO was dated August 11, 1982.

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Drexel Burnham Lambert Incorporated, 60 Broad Street, New York, New York 10004 (212) 480-6000

APPENDIX I.—ADDITIONAL INFORMATION SUBMITTED ON BEHALF OF ATLANTIC RICHFIELD CO.

EXHIBIT 1.—LETTER DATED DECEMBER 23, 1982

AtlanticRichfieldCompany
Legal
515 South Flower Street
Mailing Address: Box 2679 - T.A.
Los Angeles, California 90051
Telephone 213 486 3511

December 23, 1982

The Honorable Berkley Bedell
Chairman
Committee on Small Business
United States House of Representatives
B-363 Rayburn H.O.B.
Washington, D.C. 20515

Dear Sir:

On December 2, 1982, Mr. George H. Babikian, Senior Vice President, ARCO Petroleum Products Company, a Division of Atlantic Richfield Company, testified before the United States House of Representatives' Subcommittee on Energy, Committee on Small Business. This supplement to the December 2, 1982 testimony responds to the Subcommittee's requests for additional information at pages 69 and 96 of the unedited transcript of his remarks. In this supplemental response, we address the issues of Atlantic Richfield Company's costs of transporting crude oil from the North Slope of Alaska and of its Windfall Profit Tax liability with respect to Alaska North Slope crude oil.

These supplemental responses support Mr. Babikian's statements that Atlantic Richfield has not manipulated its transportation costs in establishing well-head values for Alaska North Slope ("ANS") crude oil; and that Atlantic Richfield's Windfall Profit Tax liabilities for the first nine months of 1981 and 1982, respectively, reflect changes in crude oil prices, and are not the consequence of alleged manipulation.

Windfall Profit Tax liability is assessed on the value of crude oil in the field. Thus, the price of ANS crude oil in the U.S. Gulf Coast includes the cost of transportation from the production field. In the case of ANS crude oil, that is a substantial expense. Testimony by Mr. Blum in the December 1, 1982 hearing asserted that in 1982 Atlantic Richfield had artificially increased the cost of transportation which, allegedly resulted in a lower Windfall Profit Tax liability. He asserted that the transportation cost "manipulation" was the explanation for what he asserted to be a $600 million reduction in our ANS crude oil Windfall Profit Tax liability compared to 1981.

Atlantic Richfield Company, in the calculation of Windfall Profit Tax, has consistently used the fair market value of the costs of transporting its crude oil from Alaska's North Slope. Exhibit 1, which is attached hereto, demonstrates that the costs of transportation have, in fact, trended down from an average of $12.18 per barrel in the first three quarters of 1981 to an average of $11.33 per barrel for the same period of 1982.

As can be seen, the facts are the reverse of those asserted. Since the transportation costs used by Atlantic Richfield in determining the field value of crude oil have gone down, the removal price has actually been reduced less than it would have, had those costs remained constant.

The explanation for Atlantic Richfield's tax liabilities for the corresponding periods of 1981 and 1982 lies elsewhere.

As I stated at the hearing on December 2, 1982, the principal explanation is elementary: The market values of all domestic crude oils fell approximately $4 per barrel between the first nine months of 1981 and the corresponding nine months of 1982.

In response to the Subcommittee's request for additional information regarding ARCO's Windfall Profit Tax liability for Alaska North slope crude oil, we have prepared Exhibits which illustrate several significant matters.

First, the prices of crude oil comparable in quality to ANS crude have fallen during those same periods of 1981 and 1982 by amounts greater than the decline in ANS prices. As I explained at the hearing, the prices Atlantic Richfield received for all of its domestic production other than ANS fell from an average of $35.27 in the first three quarters of 1981 to an average of $31.00 per barrel in the same period of 1982. Exhibit 2 displays the prices of ANS versus other domestic crude prices.

Second, the percentage reduction in Windfall Profit Tax liability was greater than the percentage reduction in price, because that tax is imposed on the amount of increase in crude oil prices attributable to decontrol. Thus, if the controlled price was $15.50 per barrel, and the price of that oil after decontrol was $22, then, subject to other statutory adjustments, the $6.50 per barrel increase is the taxable value. In this example, whereas a $4 per barrel reduction in absolute price equals about 18%, the amount subject to Windfall Profits taxation has been reduced from $6.50 to $2.50, or almost 62%.

Exhibit 3 describes the hypothetical example in a numerical format.

Third, with respect to Mr. Blum's reference to a $600 million reduction in Windfall Profit Tax liability between 1981 and 1982, the facts are displayed on Exhibit 4. In summary, the Windfall Profit Tax liability for ANS crude oil has diminished by something less than $300 million, and the tax attributable to other domestic production has diminished by something less than $300 million. From its inception in March, 1980 through November, 1982, Windfall Profit Tax paid by Atlantic Richfield totalled over $2,622,000,000.

In conclusion, benefits provided to consumers by Atlantic Richfield Company's successful execution and implementation of its marketing plans and strategies are not the result of artificial increases in transportation costs with respect to its Alaska North slope crude oil. The general decrease in the Windfall Profit Tax liability is not unique to Alaska North Slope crude oil, but rather is the result of a general decrease in all domestic crude oil prices.

Very truly yours,

Richard C. Morse

RCM/m
Encls.

ATLANTIC RICHFIELD COMPANY

ALASKA NORTH SLOPE SADLEROCHIT PRODUCTION

WINDFALL PROFIT TAX

WEIGHTED AVERAGE PER BARREL

EXHIBIT 1

	9 Months Ended 9/30/81	9 Months Ended 9/30/82
ANS Crude Price Market Price in U.S. Gulf Coast	34.42	30.52
Marine and Pipeline Transportation Costs	12.18	11.32
Removal Price	22.24	19.20
Less-Adjusted Base Price	14.57	15.88
Sev. Tax Adjustment	.96	.50
Windfall Profit	6.71	2.82
Tax Rate	70%	70%
Windfall Profit Tax	4.70	1.97

ANS AND OTHER DOMESTIC CRUDE OIL POSTED PRICES: COMPARISON BETWEEN FIRST THREE QUARTERS OF 1981 VS. 1982

EXHIBIT 2

Type Crude	°API	$/B 1981 9 Mths. Ended 9/30/81	 1982 9 Mths. Ended 9/30/82	 Δ	POSTERS**
W.T.- N.M. SOUR	34	34.62	30.82	(3.82)	ARCO, AMOCO, CHEVRON, CITIES SERVICE, CONTINENTAL, EXXON, GULF*, MARATHON*, MOBIL, PHILLIPS SHELL, TEXACO, UNION*
W.T.-N.M. INTERMEDIATE	40	36.66	32.70	(3.96)	ARCO, AMOCO, CHEVRON, CITIES SERVICE, CONTINENTAL, EXXON, GULF*, MOBIL, PHILLIPS, SHELL, SOHIO*, SUN*, TEXACO, UNION*
SOUTH LOUISIANA	33	36.52	32.65	(3.87)	ARCO, AMOCO, CITIES SERVICE, CONTINENTAL, EXXON, GULF, MARATHON, MOBIL, SHELL, SOHIO, SUN, TEXACO, UNION
KANSAS	35	36.66	32.37	(4.29)	ARCO, AMOCO, CITIES SERVICE, CONTINENTAL, DERBY, DIAMOND SHAMROCK, GETTY, KOCH, MOBIL, PHILLIPS, SHELL, SUN, SOHIO, TEXACO, UNION PHILLIPS
OKLAHOMA SWEET	36	36.58	32.62	(3.96)	ARCO, AMOCO, CITIES SERVICE, CONTINENTAL, DERBY, DIAMOND SHAMROCK, GETTY, KOCH, MOBIL, PHILLIPS, SHELL, SOHIO, SUN, UNION
ALASKA NORTH SLOPE	27	22.78	19.45	(3.33)	

** PLATT'S OILGRAM PRICE REPORT - CRUDE OIL SUPPLEMENT; NOVEMBER 1982

* POST WEST TEXAS FIELDS ONLY

COMPARISON OF PERCENTAGE CHANGE IN REMOVAL PRICE AND WPT DUE TO ASSUMED $4 PER BBL REDUCTION IN CRUDE OIL PRICE

EXHIBIT 3

	Alaska North Slope		
Removal Price	22.00		18.00
Adjusted Base Price	15.50		15.50
Windfall Profit Before Severance Tax Adjustment	6.50		2.50
Severance Tax Adjustment	.98		.38
Windfall Profit	5.52		2.12
WPT Rate	70%		70%
Windfall Profit Tax	3.86		1.48
Percentage Decrease in Removal Price		18.2%	
Percentage Decrease in WPT		61.7%	

FOR ILLUSTRATIVE PURPOSES ONLY.

DOES NOT REFLECT ACTUAL VALUES.

ATLANTIC RICHFIELD COMPANY

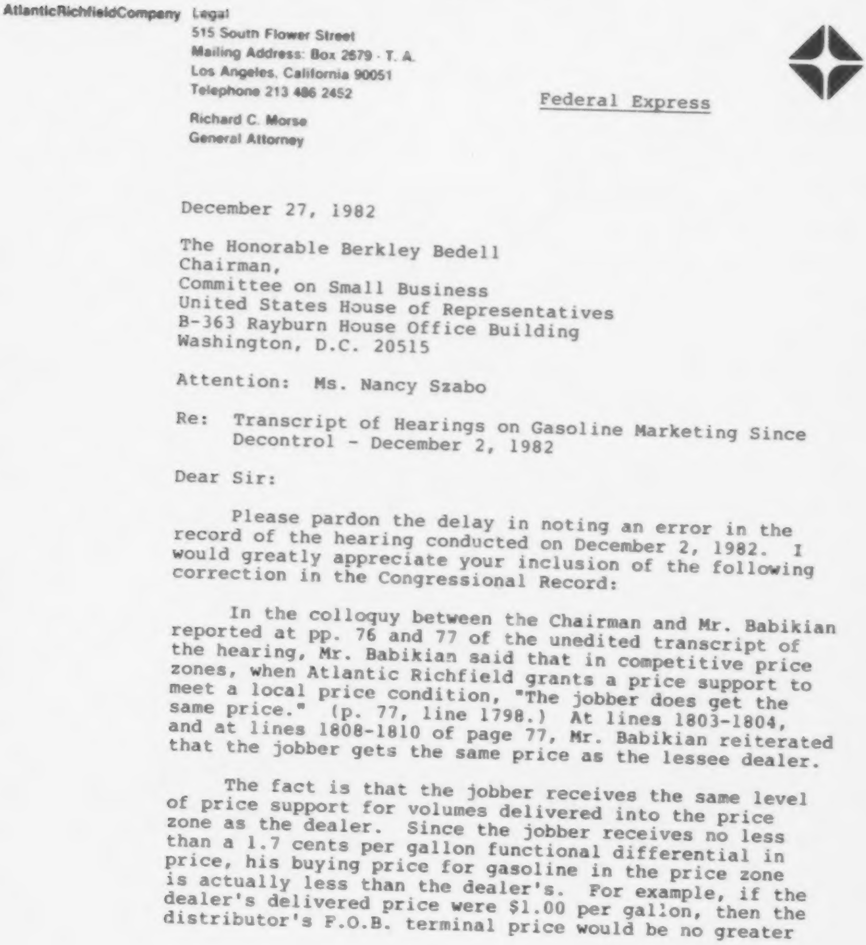
WINDFALL PROFIT TAX

SMLN'S

EXHIBIT 4

	1980 Mar - Dec	1981 Jan - Dec	1982 Jan - Nov	Total
Alaska North Slope	$204.5	$486.8	$197.0	$888.3
Other Domestic	240.7	905.4	588	1734.1
Total Windfall Profit Tax	$445.2	$1392.2	$785.0	$2622.4

EXHIBIT 2.—LETTER DATED DECEMBER 27, 1982



AtlanticRichfieldCompany Legal
515 South Flower Street
Mailing Address: Box 2679 - T. A.
Los Angeles, California 90051
Telephone 213 486 2452

Richard C. Morse
General Attorney

Federal Express

December 27, 1982

The Honorable Berkley Bedell
Chairman,
Committee on Small Business
United States House of Representatives
B-363 Rayburn House Office Building
Washington, D.C. 20515

Attention: Ms. Nancy Szabo

Re: Transcript of Hearings on Gasoline Marketing Since Decontrol - December 2, 1982

Dear Sir:

Please pardon the delay in noting an error in the record of the hearing conducted on December 2, 1982. I would greatly appreciate your inclusion of the following correction in the Congressional Record:

In the colloquy between the Chairman and Mr. Babikian reported at pp. 76 and 77 of the unedited transcript of the hearing, Mr. Babikian said that in competitive price zones, when Atlantic Richfield grants a price support to meet a local price condition, "The jobber does get the same price." (p. 77, line 1798.) At lines 1803-1804, and at lines 1808-1810 of page 77, Mr. Babikian reiterated that the jobber gets the same price as the lessee dealer.

The fact is that the jobber receives the same level of price support for volumes delivered into the price zone as the dealer. Since the jobber receives no less than a 1.7 cents per gallon functional differential in price, his buying price for gasoline in the price zone is actually less than the dealer's. For example, if the dealer's delivered price were $1.00 per gallon, then the distributor's F.O.B. terminal price would be no greater than 98.3 cents per gallon. If ARCO then granted the dealer in a zone a competitive allowance (price support) of 5 cents per gallon to meet a competitor's selling price, the jobber would likewise receive a 5 cents allowance for volumes delivered into that zone. Thus, their net buying prices would be: dealer--95 cents per gallon; distributor--93.3 cents per gallon.

Respectfully,

Richard C. Morse

Richard C. Morse/
by M. Nieves

APPENDIX J.—ADDITIONAL INFORMATION SUBMITTED ON BEHALF OF CALIFORNIA ARCO DISTRIBUTORS, INC.

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CABLE ADDRESS
"SHAPLAW"
TELEX NUMBER
664999
OF COUNSEL
RAYMOND WALLENSTEIN
A PROFESSIONAL CORPORATION

December 10, 1982

The Honorable Berkley Bedell
Chairman
House Small Business Committee
B-363 Rayburn House Office Building
Washington, D. C. 20515

Re: Supplemental State of
California Arco Distributors, Inc. ("CADI")
Hearings December 1 and 2, 1982

Dear Congresman Bedell:

Enclosed please find page 19 of "Petroleum Marketing: The Jobber Industry", prepared by the U. S. Department of Energy, dated June 1, 1980.

This document shows that as of 1973 there were 1890 wholesalers doing business in the United States. These data were compiled by the Department of Energy from reports submitted by the major refiners to the Department of Energy.

It is clear to me that Mr. Babikian's denial of the existence of approximately 2000 wholesalers in the year 1972 is solely for the purpose of concealing Arco's illegal elimination of Arco branded wholesalers.

Sincerely yours,

David Laufer
DAVID LAUFER

DL:dh
enc.

cc: Marc H. Rosenberg, Esq.

PETROLEUM MARKETING: THE JOBBER INDUSTRY

Prepared by:

Ivan Maple
Pamela Duncan
Office of Petroleum
Marketing
U.S. Department of Energy

June 1, 1980

PART II
EXHIBIT B

NUMBER OF JOBBERS
1973 vs. 1978

	1973		1978	
	Branded Jobbers	Commission Agents	Branded Jobbers	Commission Agents
MAJORS:[1]				
AMOCO:	590	3,072	2,339	0
ARCO:	1,397	493	1,331	2
CHEVRON:	138	502	492	526
CITIES:	522	9	249	0
CONOCO:	522	533	896	0
GETTY:	158	13	609	150
MARATHON:	86	411	99	355
MOBIL:	2,345	313	2,081	99
PHILLIPS:	1,746	286	1,636	17
Shell:	1,120	22	849	3
Union:	606	496	685	215
TOTAL (MAJORS):	9,260	6,150	11,266	1,367

---

[1] For purposes of comparison, only those "majors" that consistently reported data in the years examined are included. In addition to the above, Exxon, Gulf, and Texaco reported 1,331; 373; and zero branded jobbers; and 221, 663, and 603 commission agents, respectively, for 1978.

APPENDIX K.—CORRESPONDENCE RE CADI VS. ARCO LITIGATION

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OF COUNSEL
RAYMOND WALLENSTEIN
A PROFESSIONAL CORPORATION

January 26, 1983

Mr. William Morse
Atlantic Richfield Company
515 South Flower Street
Los Angeles, California 90017

Re: CADI v. ARCO

Dear Mr. Morse:

This letter is written in response to your letter dated December 21, 1982. I have delayed in responding to your letter for the sole purpose of permitting myself to obtain a copy of the hearings at which Mr. Babikian was present before the United States House of Representatives Committee on Small Business Subcommittee on Energy, Environment, and Safety Issues Affecting Small Business.

I felt this appropriate in light of your reference to those proceedings. I have now received the transcript and have had the opportunity to review the statements and testimony of George Babikian given on December 1, 1982, at said committee hearing.

The series of correspondence between my office and Paul Richmond and yourself arose out of a request of our office to Arco to restore to Cox Oil Company ("Cox"), an Arco branded wholesale distributor, the volumes of motor gasoline that Cox was permitted to purchase prior to the unlawful modifications of Cox's franchise unilaterally imposed by Arco. Specifically, as has been admitted by Arco, Arco has imposed volume ceilings on the amount of motor gasoline that Cox is permitted to purchase from Arco.

A review of the correspondence prepared by Mr. Richmond as well as yourself, makes it clear that you are deliberately attempting to mislead the Honorable Lowell Weicker, Chairman of the Senate Small Business Committee, the Honorable Berkeley Bidell, Chairman of the House Small Business Committee, and the Honorable William French Smith, Attorney General of the United States. By this letter I will demonstrate to you, as well as to each of the individuals to whom you have directed your letter of December 21, 1982, that Arco has unlawfully refused to supply substantial volumes of gasoline to Cox, previously supplied to Arco, and has been proceeding on a course of conduct designed to destroy Arco distributorships in California.

MOTOR GASOLINE UNLAWFULLY WITHHELD FROM COX OIL

There can be no dispute that Arco has refused to supply substantial volumes of motor gasoline that Cox is entitled to receive. Attached hereto as Exhibit "A" is a copy of the chart which was affixed to the Declaration of James D. Kowal, dated December 21, 1982, and filed in the litigation pending in the Los Angeles Superior Court. Said document shows the volumes of motor gasoline Cox was permitted to purchase by Arco for the eight month period of April through November, 1981, as compared to April through November, 1982. For convenience of the reader of this letter, said chart is set forth hereafter:

Month	Gallons Purchased in 1981	Gallons Purchased in 1982	Volume of Gasoline Witheld by Arco
April	1,501,997 gallons	807,534 gallons	694,463 gallons
May	1,847,859 gallons	806,195 gallons	1,041,664 gallons
June	1,754,903 gallons	636,114 gallons	1,123,789 gallons
July	1,823,540 gallons	544,269 gallons	1,279,244 gallons
August	1,828,092 gallons	349,683 gallons	1,478,409 gallons
September	1,603,623 gallons	565,069 gallons	1,038,554 gallons
October	1,870,232 gallons	586,937 gallons	1,283,295 gallons
November	1,139,929 gallons	519,735 gallons	620,194 gallons
		Total Loss:	8,558,612 gallons

It is significant to note that at no time during any of the correspondence written by you or Mr. Richmond, did either of you set forth the comparison of gasoline volumes which show the substantial decline in volume which has been caused by the volume caps and other conduct of ARCO.

It can be anticipated that you will respond to this by claiming that commencing June, 1982, there was a decline below the volume of motor gasoline Cox was permitted to purchase. However, as you know, it was at this time that the payment terms for motor gasoline were changed from 10th prox to receipt of invoice. These payment terms, and the resulting impact on cash flow and cost of money, are the direct cause of the decline of volumes commencing in June, 1982. For similar periods of time for 1981 and 1982, volume of motor gasoline permitted to be purchased and capable of being sold decreased by 64.01% as a direct result of the wrongful and unlawful conduct of Arco.

It was this type of result, and Arco's unlawful conduct that led the court to issue the preliminary injunction prohibiting the modification of credit terms and hauling allowances.

The changes in the volume of motor gasoline that Arco permits Cox to purchase are unlawful. California Business and Professions Code § 20999 et seq., which has been admended so that it is the same as the Petroleum Marketing Practices Act, defines contract, for purposes of supply, as follows:

> "For supply purposes, delivery levels during the same month of the previous year shall be prima facie evidence of an agreement to deliver such levels."

Thus, pursuant to Business and Professions Code § 20999 et seq., the delivery levels for the months of April through November 1981, are presumed to be the delivery levels that should have been applied by Arco and made available to Cox, during the year of 1982.

Arco cannot be heard to complain that it was compelled, by Department of Energy Regulations, to supply the volumes of motor gasoline supplied by Arco to Cox during the period of April, 1981 through November, 1982. As you know, the DOE regulations were not in existence during that period of time. Thus, Arco voluntarily supplied those volumes of motor gasoline.

It is apparent that what Arco sought to do was to encourage Cox, as well as other Arco branded wholesale distributors, to greatly increase their business knowing full well that when Arco instituted its steps to destroy the business of the Arco distributors, Arco would be the beneficiary of the business developed by the Arco distributors.

DESTRUCTION OF THE ARCO DISTRIBUTOR

In your letter of December 21, 1982, you refer to allegations of Mr. Findley that Arco's number of wholesalers had declined from approximately 2,000 in 1972 to approximately 176, currently. You stated that Mr. Babikian testified before the Committee hearings that never in its histroy did Arco have 2,000 branded distributors.

Mr. Morse, let's set the record straight.

In the report entitled "Petroleum Marketing in the Distributing Industry" prepared by Mr. Ivan Maple and Pamela Duncan of the Office of Petroleum Marketing, U.S. Department of Energy, dated June 1, 1980, an analysis by the Department of Energy of informational statements provided to the Department of Energy by Arco disclosed that between the years of 1973 and 1978, the number of wholesale distributors reported to exist by Arco, consisting of commission agents and branded jobbers, were:

"NUMBER OF ARCO DISTRIBUTORS
1973 VERSUS 1978

1973		1978	
Branded Distributors	Commission Agents	Branded Distributors	Commission Agents
1,397	493	1,331	2."

In the 1973 publication of the "National Petroleum News Fact Book," National Petroleum News reported that Arco had, throughout the United States, approximately 1,664 Arco branded distributor contracts with branded jobbers, commission agents and terminal operators.

The destruction of these independent wholesalers is verified by Arco's Franchise Offering Circular for Prospective Franchisees required by the State of California printed and published by Arco. In Arco's Franchise Offering Circular dated October, 1981, Arco stated:

> "As of October 1, 1981, Company [Arco] was a party to approximately . . . 271 contracts with distributors in the United States."

In California, in the year 1973, there were approximately 120 Arco distributors and commission agents doing business. As of July 23, 1982, there were approximately 27 Arco distributors remaining in business in the State of California. That number has further declined as of the present date.

It can be anticipated that you will seek to distinguish commission agents from your wholesale distributors stating they were not independent business entities. Said argument was urged by Arco in connection with litigation under the regulations of the Department of Energy, and Arco lost. These arguments were made by Arco in *Atlantic Richfield Company v. FEA*, 429 F. Supp. 1052 (N.D. Cal. 1976), in an attempt to draw distinctions between commission distributors and branded jobbers. This contention and distinction was rejected by the court upon factual showing that the commission distributors of Arco performed the following functions.

> ". . . [Solicited] the customers, negotiates agreements for sales, takes orders and writes up the invoices, ascertains the amount of fuel needed at any given time at the bulk plant, makes sure such oil is supplied by Arco, contacts customers in cases of dissatisfaction, ..."

Rejecting Arco's arguments, the Department of Energy consistently treated the commission distributor the same as the branded jobber.

Thus, when you and Mr. Babikian represented to the Hearing Committee the number of wholesale distributors, you have apparently intentionally sought to mislead that Committee by omitting to set before the committee the number of commission distributors that Arco has destroyed and eliminated.

This program of destruction commenced in 1973 with Program AFE. At that time, W. L. Warrick, an employee and executive officer of Arco, prepared and submitted to Arco's Board of Directors, for its approval, a marketing plan entitled "Atlantic Richfield Company, Products Division, Bulk Plant Profitability, Program AFE." The purpose of Program AFE was to identify and establish a marketing plan for the elimination of Arco distributors in favor of marketing motor gasoline through retail sales operation supplied directly by Arco.

Program AFE stated essential prerequisites to Arco's elimination of its distributors. W. L. Warrick said:

> "The project must be completed during period of product tightness to prevent loss of desirable volume.

* * *

> "While the evaluation of delivery cost . . . indicated the direct delivery of these products to be more profitable on an overall basis than commission delivery, any previous attempts to improve profitability by substituting a complete direct delivery system for the existing commission simply resulted in the former commission agent performing the same function for a competitor. Because of the commission agent's local relationship with the customers, he was usually able to persuade a great majority of them to purchase from whichever competitor he was then representing resulting in a serious loss of voulme and overall revenue.
>
> ". . . [W]e are, under product allocation, obliged to continue to serve all existing customers. This will effectively prevent our complete withdrawal from certain classes of trade or geographical markets until such time as product allocation ceases. Product allocation will also minimize the loss of desirable volume during these next few years."

Among the benefits to be gained by the elimination of Arco distributors, discussed by W. L. Warrick in his report to the Board of Directors, were:

> "Overall reduction in delivery costs if commissions are recognized as part of delivery costs of transferring products from terminals to customers.
>
> * * *
>
> "Improvement in profitability on volume now delivered by commission agent.
>
> * * *
>
> "Direct control over retail outlets accepted as lessee dealer units now controlled by commission agent."

Thus, Program AFE contemplated the elimination of the Arco distributor, the gaining of the benefit of the profit earned by the Arco distributor, and the assumption by Arco of the accounts developed and supplied by the Arco distributor with the result and control over the retail service station dealer.

Program AFE projected that termination of the individual commission agents would take place between January, 1974 and December, 1976, with 120 terminations estimated in 1974 and approximately 400 terminations estimated in 1975. The success of program AFE has been discussed above.

In contemplation of the outcry that would result from the wholesale destruction of such businesses, Arco established a lobbying effort designed to blunt the pleas for assistance from commission agents and Arco distributors. Attached hereto as Exhibit "B" is the internal correspondence of Bill Duke, to James S. Morrison, dated April 7, 1975, regarding "Congressional Contracts on Bulk Plant Closing."

The purpose of Mr. Duke's correspondence and the program proposed by Mr. Duke is described by Mr. Duke as follows:

> "Hopefully, we can ease the usual trauma in congressional offices somewhat by explaining our actions to congressional representatives simultaneous with -- or prior to -- the Company's official announcement to the bulk plant operators involved. In some instances this should be able to reduce the flack from at least the key members.
>
> "The attached list includes most, but not all, of the members [of Congress] who hold positions of leadership or influence, or who by virtue of their swing positions on critical committees, are crucial to any legislative program involving the energy industries.
>
> "If any of our closing decisions affect these districts, we would be very anxious to attempt to get our story told before the fact.

> "In an attempt to further narrow the focus, I have taken the liberty of placing plus signs in front of the members who are of special concern to us at this time. As noted, the asterisks indicated members who represent a substantial number of Arco employees.
>
> "Any advance notification of actions affecting these districts would be very much appreciated. We will coordinate the timing with people in your department to insure that no untimely leak occurs."

One can only wonder, in hindsight, if Arco was as candid to the congressional members it contacted in 1975, as it has been in connection with Mr. Babikian's statements delivered to the Committee Hearings in December, 1982.

INVITATION TO MEET AND CANDIDLY DISCUSS ARCO'S CONDUCT

I would invite your participation in a meeting before the Honorable Lowell Weicker, Berkeley Bidell, and William French Smith, to discuss these matters candidly and openly. At said meeting I would invite Arco to demonstrate good faith by permitting our office to utilize documents produced by Arco in connection with litigation in California, which documents, cannot presently be disclosed because of a protective order obtained by Arco from the Los Angeles Superior Court.

In conclusion, Arco's purposes cannot be disputed. As acknowledged by Mr. Babikian at the Committee Hearings, Arco would like to be 100% retail in its distribution of motor gasoline. Arco is moving in this direction as quickly as possible. Its program has been on the books for many years and repeatedly acknowledged. (See Declaration of Jim Campbell, attached.) As confirmed by James Morrison, President of Arco Petroleum Productions Division:

> "The expansion of gasoline sales through its own dealer network at the expense of its wholesale business represents a marketing plan aimed at restoring Arco's primary focus on retail of petroleum sales product . . . ."

Arco's cries of equity in connection with its allocation of motor gasoline are refuted by methods previously utilized by Arco to allocate motor gasoline. In 1973, before the Federal Energy Regulations, and during a period of shortage, motor gasoline was allocated on an equal percentage basis to all classes of customers. Arco's allocation program as presently designed is clearly discriminatory and designed to accelerate its goal of being 100% retail at the "expense of its wholesale business."

Very truly yours,

SHAPIRO, LAUFER, POSELL & CLOSE
A Professional Corporation

By Kenneth P. Roberts
KENNETH P. ROBERTS

KPR/br

cc: P. J. Richmond
D. C. Smaltz
The Honorable Lowell Weicker
The Honorable Berkeley Bidell
The Honorable William French Smith

LET-1:13KPRLET

AtlanticRichfieldCompany Legal
515 South Flower Street
Mailing Address: Box 2679 - T. A.
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Telephone 213 486 2452

Richard C. Morse
General Attorney

February 2, 1983

Kenneth P. Roberts, Esq.
Shapiro, Laufer, Posell & Close
One Century Plaza, Suite 2600
2029 Century Park East
Los Angeles, California 90067

Re: CADI v. ARCO

Dear Mr. Roberts:

Assuming your letter addressed to Mr. William Morse was intended to be addressed to me in reply to my letter written on December 21, 1982, I respond as follows:

We believe your factual allegations are incorrect and your legal conclusions in error. To the extent that you might elect to present those claims which you contend constitute illegal conduct to a court for determination, a point by point discussion of those issues in extrajudicial communications appears inappropriate. Further, inasmuch as Cox Oil Company is a member of the plaintiff group characterized as "CADI" in litigation presently pending before the Superior Court, it would not appear that any productive purpose would be served by convening a meeting with Messrs. Weicker, Bedell and Smith. While we intend to continue our vigorous defense of the claims in issue, we also recognize that we continue in an active business relationship with your clients. We remain available for discussions of ways in which that ongoing relationship can become less contentious and more productive.

Very truly yours,

Richard C. Morse

cc: P.J. Richmond
D.C. Smaltz
The Honorable Lowell Weicker
The Honorable Berkeley Bedell
The Honorable William French Smith

APPENDIX L.—ADDITIONAL COMMENTS OF JACK A. BLUM RE ARCO TESTIMONY

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(202) 857-0220
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December 15, 1982

The Honorable Berkley Bedell
Chairman
Subcommittee on Energy, Environment and
Safety Issues Affecting Small Business
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In testifying before your subcommittee on December 1, I made a number of references to the activities of Arco and accused Arco of attempting to drive its non-branded independent competition out of business.

The testimony of George Babikian which followed mine on December 2, I believe, coroborates in substantial fashion the points I made. A further follow-up with appropriate agencies is in order.

First, Mr. Babikian [1] told the subcommittee that Arco has established approximately 800 pricing zones which are constantly being changed. The zones are used for determing "competitive prices." Mr. Babikian confirmed my statement about the zones and how they are used.

We believe that the zones are constantly changing to make it impossible for a competitor to sue for price discrimination or monopolization or even to complain effectively to the Federal Trade Commission under the Robinson-Patman Act. The zone changes mean that the factual situation changes constantly and that "new facts" govern each sale. In this environment, the victim of price discrimination has a hard time finding out whether it occurred. If an allegation of discrimination is made, Arco will claim it is an isolated case and that the facts have changed since then.

The pricing zones are, we believe, a fundamental aspect of Arco's larger pattern of price discrimination and illustrate its predatory intent. The subcommittee should not accept Arco's refusal to supply a copy of the zone maps and in addition to the maps should request the planning documents on which the maps were based and documents relating to zone changes. The documents will, we believe, show that the zones were established with predatory intent.

---

[1] Testimony of George Babikian before the House Subcommittee on Energy, Environment and Safety Issues Affecting Small Business, on Review of Changes that have Occurred in the Gasoline Marketplace Since Decontrol, December 2, 1982, Transcript at 60.

Mr. Babikian said that the overall gasoline volume of the company had increased by 15% and the retail volume had increased by 50%. [2] The striking difference in these two numbers underscores the decision that Arco made to cut out sales to jobbers and push its sales through retail units in an effort to eliminate competition. Both the per station and overall volume numbers Mr. Babikian referred to show that the increases have come through Arco dealer or directly operated stations and inasmuch as jobbers are one-third of Arco's business, their sales have decreased substantially.

When asked about Arco's relationship with its jobbers, Mr. Babikian said that he was limiting the amount of gasoline sold to jobbers because if Arco did not impose limitations the jobbers would "pull our terminal dry." [3] The point in my testimony was that Arco had deliberately underpriced its product. It was and is selling gasoline far below market clearing levels for the express purpose of driving competing independents out of business. Mr. Babikian's statement supports that proposition. He understands that Arco's prices are far below market and understands that if jobbers could buy product at Arco's low prices the product would all be sold profitably at the wholesale level and would not be available for Arco's campaign to undercut non-branded independents at the retail level.

Mr. Babikian said that Arco bought gasoline on the open market in order to meet the additional dealer demand that is coming as a result of their very low prices. The purchases were during the summer when spot gasoline prices far exceeded Arco's DTW. In other words, Arco is buying gasoline and losing money on it to sustain its anticompetitive program. By making purchases it is also drying up its competitors' supplies and increasing their costs.

Normally demand is regulated by price changes. In this case, Arco had no intention of using price to keep supply and demand in balance. It will keep low street prices and buy expensive gasoline in the spot market to keep its program rolling.

---

[2] Id. at 65.

[3] Id. at 74.

Mr. Babikian said that they bought gasoline during the period of May to December because "we didn't have enough to meet our demand fully." [4] Had Arco been competing fairly it should have raised its retail price.

As I said in my testimony, I believe that the Arco volume increases have come as a result of Arco setting very low retail prices in close proximity to nonbranded independent retail stations and that if detailed information were subpeonaed from the company my allegation would be supported.

A substantial portion of my testimony was devoted to the issues raised by Arco's pricing of its Alaskan North Slope crude at the wellhead for purposes of the windfall profits tax. Mr. Babikian said that the company bases the price of North Slope crude on the value of West Texas sour crude in the Gulf Coast market. [5] This is a totally inappropriate valuation. The Arco crude going to the Gulf Coast is marginal and that should not set the value for its ANS production.

Moreover, other ANS producers set different wellhead values for their crude and pay substantially more tax and royalty on it.

Mr. Babikian said that the company deducts a freight charge based on USFRA rates which are the published rates for moving crude from Valdez. [6] The crude that moves to California and Washington State moves in Arco owned vessels fully committed to the Valdez/refinery service. The cost of operating these vessels is extremely low and the published rate bears no relationship to the value of the service provided by Arco's transporation subsidiary.

Every dollar of price increase at the wellhead nets Prudhoe Bay producers 11¢ a barrel because marginal tax and royalty rates add up to 89¢ out of every dollar. A $1 a barrel increase in the downstream sector nets Arco, which in 1981 paid taxes at a 19.4% rate, 80.6¢. The clear incentive built into the windfall profits tax is to shift profits downstream. We believe that Arco has candidly admitted to doing this.

4/ Id. at 75 and 76.

5/ Id. at 66.

6/ Id. at 68.

If the profit shift can be defended as legal, as Arco claimed, then the statute is badly flawed and is in urgent need of correction.

To summarize our complaints against Arco, it has decided to forego profits in order to drive its most serious competitors out of business. It is using its extraordinary ability to avoid tax liability on ANS crude through transfer price manipulation to subsidize the exercise and remain profitable. It is manipulating its marketing zones and using discrimination among dealers and jobbers to destroy the ability of non-branded independents to compete with it.

I said in my testimony that Arco could make more money than it presently does by shutting down its retail stations altogether. Mr. Babikian's statment about sales to jobbers proves my point and suggests that the transcript be referred to the Federal Trade Commission for further action. If action is not forthcoming, the subcommittee should promptly consider corrective legislation.

Sincerely,

Jack A. Blum

Jack A. Blum

APPENDIX M.—ADDITIONAL COMMENTS OF ELLIS W. GUNNELS, VICE PRESIDENT, TEXACO, U.S.A.

TEXACO
U.S.A.

ELLIS W. GUNNELS
VICE PRESIDENT

P. O. BOX 52332
HOUSTON, TEXAS 77052

December 10, 1982

Honorable Berkley Bedell, Chairman
Subcommittee on Energy, Environment, and
Safety Issues Affecting Small Business
of the Committee on Small Business
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Bedell:

During the Hearing on December 2, 1982, the Subcommittee requested that Texaco furnish to it the average base period volume used for Texaco's incentive program at new retail outlets opened during 1982 in the Atlanta, Georgia area. The average gallonage established for the seven outlets Texaco has opened this year in and around Atlanta is approximately 97,300 gallons per month.

Also during the hearing on December 1, 1982, Mr. John V. Kulik, Government Affairs Director, Pennsylvania and Delaware Service Station Dealers of America, made note of, and filed for the record, a study done by the Governors Energy Council on the Pennsylvania gasoline market. The study entitled, "Gasoline Marketing Trends and Choices", covers Pennsylvania markets during the period from May to September of this year. We believe that the members of your Subcommittee should be made aware that serious reservations exist with the methodology and the conclusions of the Energy Council's Study.

Attached are a series of documents filed at the request of and on behalf of the American Petroleum Institute. The documents are a letter from Professor John R. Umbeck of Purdue University to the Executive Director of the Governor's Energy Council, Professor Umbeck's October 1982 study on retail gasoline markets, and a copy of Professor Umbeck's statement submitted to the Pennsylvania legislative in May of this year. All three documents provide not only a critique of the Pennsylvania study but also establish Dr. Umbeck's credentials to make the critique.

We trust Texaco's statement filed with your Subcommittee as well as our oral responses to your concerns have given you a better understanding of Texaco's marketing practices and the gasoline market in general. Texaco appreciated the opportunity to appear before your Subcommittee.

Respectfully,

EWG:Sbl

November 1, 1982

Robert A. Shinn
Executive Director
Governor's Energy Council
1625 N. Front St.
Harrisberg, Pennsylvania
17102

Dear Mr. Shinn:

I recently received a copy of your report "Gasoline Marketing: Trends and Choices" and felt it required some response on at least two points.

The first point which deserves comment is the casual dismissal of the credibility of my study on the Maryland divorcement experience. You state that "...there may be some question as to the validity of the data collected by Umbeck and Barron." The question of validity apparently stems from two alleged shortcomings of the data collection: subjective market selection and no external data verification. Your first objection is stupid and the second is incorrect.

Any economic study of a market must first define what the limits of the market will be empirically. Any definition will be subjective as there exists at this time no generally accepted definition of a market. The fact that we allowed each station proprietor to choose his competitors is probably one of the best features of this study. Each of these station operators would periodically survey the prices of those stations which he considered to be his immediate rivals. These prices were recorded in a price log over time. This was the source of most of our data. The survey technique was based upon the supposition that the station operator would know better than anyone else which stations represented the most immediate competitive threat. There are no other economic studies which have a superior market definition! Notice that your own feeble attempt at economic analysis is based upon a subjective definition of a market. Do you believe that something called a Baltimore or a Philadelphia has some magic non-subjective market properties just because you say so?

Research economists are painfully aware of the incentives for certain individuals to distort or alter data in order to further their own self interests. In fact I am currently engaged in a research project with the federal government to identify and correct for biases in their unemployment figures. It seems that not only do the unemployed persons have some incentive to lie but so do the government data collectors.

My study of the Maryland market anticipated the incentives which might exist with the oil companies. Certainly they had something to gain by making it appear as though gas prices increased after divorcement. While I had no way to verify directly the validity of the historical price data which they had recorded in their price logs, there where two indirect tests for validity built into the study.

As you know, I collected data from each of the divorced stations and their surrounding (subjectively defined) market areas. Frequently two divorced stations were located so close to each other that they reported the same stations as competitors. In fact there were nearly 150 stations which appeared in more than one market area. This provided me with a natural test to see if any one station operater distorted the information. If he lied and reported the prices inaccurately, it would not be consistent with the prices reported by another operator for the same station. I found no evidence that any one source of data was biased.

Of course, it could have been possible that all of the data collectors got together and agreed to cheat uniformly and consistently so that the biases would not have shown up in the previous test.That is where the second test came in. If the oil companies knew I was gathering the data in order to measure the impact of divorcement on gasoline prices, they would have had the incentive to report before divorcement prices lower than they actually were, and after divorcement prices higher than they actually were. This cheating would have led me to find absolute prices higher after divorcement. However, if you had taken the time to read my complete study and not just the 7 page summary, you would have known that most of the study was concerned with "relative" and not "absolute" prices. This is very important because if the oil companies had uniformly cheated on their price reports, this would have been detected immediately. The reason is quite simple. Our study measured the price of gasoline at the divorced station relative to the prices at competitive stations.

To see why this is important, suppose that the divorced station was charging $1.00 per gallon and his competitors were charging $1.05 before divorcement. The relative price is 1/1.05 = .952. After divorcement suppose the divorce station increased its price to $1.04 while his competitors raised their prices to $1.06. Now the relative price would have risen to 1.04/1.06 = .981. This is precisely what economic theory predicts will happen and it is precisely what we found. Since most people have not read the entire study, this point has gone unnoticed. If the oil companies had colluded to alter the data in their favor, this would have shown up in the relative prices. There is no evidence that this happened! If the reporting operators had cheated and lowered all of their pre-divorcement prices uniformly and then raised their post-divorcement prices uniformly, the relative prices would not have changed and our entire theory would have been refuted!

Our internal checks gave us no reason to question the validity of the data collected.

The second point which I would like to address is the fact that you and your commission apparently use two standards for the evaluation of research: one standard for my work and another for your own. I already pointed out that your empirical definition of a market is just as subjective and far less useful than my own. That obviously did not bother you. What I have not yet mentioned is the fact that all of your other data is subject to the same types of possible biases as my data, but you have no internal checks as I did. For instance, your surveys of Baltimore and Philadelphia were done by the Lundberg surveyers. Do you know how they are paid and how their work is validated? If they are paid by the interview they have an incentive to rush each survey in order to get more interviews and increase their own income. How is their work validated or is it? If it is not systematically and randomly monitored, they have no incentive to accurately collect and report their data.

Much of the other data in your report is obviously biased and yet you did nothing to adjust for this. For instance, all of your reports on rent increases and price squeezes were reported by franchised dealers who have a clear incentive to distort these figures since they are the ones who will directly benefit from divorcement legislation. You made no attempt to randomly sample the market for other reports of rent or price complaints to possibley eliminate these reporting biases.

You and your commission dismiss my study, probably the most scientific and carefully done study of retail gasoline marketing that has been done to date, and then you suggest that your own findings are superior, non-subjective and unbiased. As a scientist and researcher who has devoted most of my career to the pursuit of objective understanding I take this study as a personal insult. The purpose of your so called report is clear, you had reached your conclusions before you began.

Dr. John R. Umbeck
Purdue University

[Note.--Additional material submitted for the record has been retained in the subcommittee's files.]

APPENDIX N.—STATEMENT OF NATIONAL ASSOCIATION OF TEXACO WHOLESALERS IN RESPONSE TO MR. GUNNELS' TESTIMONY

natw
National Association of Texaco Wholesalers, Inc.
6551 Loisdale Court/Suite 606/Springfield, Virginia 22150/(703) 922-9784/9785

December 21, 1982

Subcommittee on Energy, Environment, and
Safety Issues Affecting Small Business
Committee on Small Business
House of Representatives
Washington, D.C. 20215

- STATEMENT OF REBUTTAL OF TESTIMONY -

The following is submitted in rebuttal to portions of both the oral and written testimony presented to the Subcommittee, on December 2, 1982, by Mr. Ellis W. Gunnels, Vice President, Marketing, Texaco, U.S.A.

PRICING - DIRECT DELIVERED SERVICE STATIONS VS. WHOLESALE DISTRIBUTORS

Reference page 8, written statement and lines 2738-2792 oral testimony. Mr. Gunnels denied that Texaco had sold gasoline to direct delivered independent service station dealers at prices equal to or below those charged its wholesale distributors in the same marketing area. He then admits that: "It is possible, however, that one or more gasoline invoices a retailer receives late in the month, after he/she has qualified for the maximum rebate, might reflect a price lower than a wholesaler's terminal price." (Page 8, written testimony.) Mr. Gunnels further stated throughout his oral testimony that the wholesale distributor price for motor gasoline is about 5.5¢ to 6¢ under the delivered price charged direct served service station dealers. My office is in possession of direct delivered dealer and wholesale distributor invoices which reflect prices for each as indicated below. (These documents have been shown and explained to a member of Chairman Bedell's staff.

Hal Barstow, *President*, Paramount, CA / Shelby Blevins, *Vice President*, Yakima, WA / Jim Kisellus, *Vice President*, Gardner, IL
Roland Robert, Jr., *Secretary*, Hammond, LA / Robert Claytor, *Treasurer*, Winchester, VA / Tom West, *Executive Director*, Springfield, VA

I am not including them herewith because of possible retaliation by Texaco toward the individuals concerned. However, the documents are available for review by Chairman Bedell or any member of his staff, upon request.)

Invoices of a Texaco wholesale distributor and a Texaco direct delivered independent service station dealer located in the same small town, dated November 15, 1982, and November 16, 1982, respectively, reflect delivered gasoline prices as follows:

	Price Per Gallon Regular Leaded Gasoline	Price Per Gallon Regular Unleaded Gasoline
Wholesale Distributor	$1.1267	$1.1667
Direct Delivered Service Station Dealer	$1.1231	$1.1631
Wholesale Distributor Paid This Amount More Per Gallon	$ .0036	$ .0036

Prices include freight and taxes. Distributor's earned discount of 1% for payment within 10 days (93/100¢ for leaded and 97/100¢ for unleaded) is not included. The service station dealer concerned was receiving a 6¢ a gallon rebate based upon him having purchased, at that time, 50% of his monthly base volume. When he reached 100% he would receive an additional 1.5¢ a gallon rebate, retroactive to the first gallon he purchased that month. This would widen the gap from .0036¢ to 1.86¢ per gallon.

Using the average rebate for the month, rather than the incremental rebates of 6¢ and 1.5¢, based upon the direct dealer buying 100% of his monthly base volume, the direct dealer would receive a rebate of 4.5¢ a gallon for every gallon purchased during the month. The difference between the basic delivered price to the dealer (without rebate included) and the distributor, in this case, started out with the distributor buying for 5.64¢ less than the dealer. Using the average rebate of 4.5¢ a gallon, the wholesale distributor would have paid 1.14¢ less for each gallon purchased throughout the entire month. There was absolutely no way the distributor could sell to his dealers at a price that would allow him to recover his costs of doing business while, at the same time, make them competitive with the direct delivered dealers. In fact, the average rebate of 4.5¢ a gallon, used in this example is a conservative figure. Supplemental information submitted by Mr. J. E. Meintzer, Jr., Easton, MD in response to lines 2072-2074 of his oral testimony before the Committee on December 1, 1982 revealed that the average rebate for Texaco direct served dealers in the Washington, D. C. Division was 5.1¢ per gallon for the month of November, 1982.

Although it is rare for a distributor to be able to obtain a direct delivered dealer's invoice, this example is not an isolated instance; rather it is representative of information I have been receiving from Texaco wholesale distributors across the nation for the past several months.

SUBSIDIZATION OF INVESTMENT SERVICE STATIONS

Reference lines 2395-2478 of Mr. Gunnels' oral testimony and pages 11-13 of his written testimony. Mr. Gunnels denies that Texaco's company owned and operated (investment) service stations are being subsidized.

We are in possession of a credit card sales slip and wholesale distributor invoice, dated May 19, 1982 showing that a Texaco wholesale distributor purchased 13.6 gallons regular leaded gasoline at an Atlanta, Georgia metropolitan area Texaco investment service station for 2.15¢ a gallon less than the same distributor paid for over 6,000 gallons delivered to his bulk plant, at wholesale, on the same date approximately 70 miles away. This does not include the distributor's earned discount of 1% for payment within 10 days. Another invoice also in our possession, dated May 19, 1982 reflects that a Texaco distributor located in the immediate Atlanta, Georgia metropolitan area paid Texaco 1.45¢ a gallon more for regular, leaded gasoline than the gasoline was selling for retail at Texaco's investment station on May 19, 1982. (Same Texaco credit card slip mentioned above was used in comparison.) These documents are also available for review by Mr. Bedell and his staff. I submit that, if Texaco's investment stations are not being subsidized by Texaco's crude and refinery operations, then they are being subsidized by Texaco wholesale distributors in the form of pricing schemes developed by Texaco. Mr. Gunnels testified that the price Texaco charges its investment stations for gasoline is the same as it charges its independent dealers (lines 3037-3049, oral testimony). Therefore, it is impossible for these investment stations to recover operating expenses and the investment in land and facilities by selling regular, leaded and unleaded gasoline below these prices, regardless of composite pricing. There just is not that much of a market for premium gasoline.

NATW SURVEY RESULTS

In order to point out to Texaco's management the gross inequities in their pricing system for direct dealers vs. wholesale distributors, a telephone survey was conducted by my office, October 19-25, 1982. Results were furnished to the office of the Vice President of Marketing, Texaco, U.S.A. at the request of his Assistant Manager, Resale. These results are included herein for the record. It is obvious from the figures shown that Texaco's pricing policies have made it difficult to impossible for its wholesale distributors and their dealers to compete in the marketplace.

(Insert Survey Results Here)

Another survey (written) recently conducted by NATW, which received a 64% response from members, documents very clearly that the top problem facing Texaco wholesalers is Texaco's direct served retail dealers purchasing gasoline at prices below or equal to the prices charged wholesale distributors. In fact, 56% of the members responding ranked it the number one priority problem; 16% second priority; and 7% third priority. Less than 10% indicated that it was not a problem. Results of the same survey sent to non-NATW members show: 70% ranked it the number one priority problem; 14% number two priority; and 8% number three priority.

CREDIT TERMS

Reference lines 2530-2535 of Mr. Gunnels' oral testimony, whereby he states that Texaco has not changed its credit terms to distributors on motor gasoline in "years and years", and that terms have always been 1% for payment within 10 days, net 30 days. I know of no Texaco wholesale distributor who has 30 days to pay for his motor gasoline. The many invoices I have seen (including the ones used in the aforementioned examples) specifically state "Net 10 Days." If any distributors have Net 30 days, it is almost certain that the line of credit extended to them by Texaco would require payment far in advance of this time frame. For example, if a distributor's line of credit is $100,000 and he buys $10,000 worth of gasoline a day, after 10 days he would have to pay at least the first invoice off before he could obtain another load of gasoline.

In addition, before and during controls,payment within 10 days to obtain the 1% discount was computed from the date the invoice was mailed by Texaco, thus allowing the distributor an average of 15 days from the time product was picked up from the terminal and the date payment had to be in Texaco's hands. Since decontrol, Texaco has compressed this time frame to 10 days.

TEXACO VOLUME INCENTIVE REBATE PROGRAM

Reference lines 2659-2661, Mr. Gunnels' oral testimony. Mr. Gunnels stated that he cannot remember if the Texaco Wholesaler Council requested that direct delivered service stations be taken off the rebate at the same time it was discontinued for wholesale distributors. Most of the Texaco Wholesaler Council members are also members of NATW. I have personally talked to several of them who attended the meeting referred to in Mr. Gunnels' testimony and they all vividly remember that there was not unanimous agreement among Council members that the rebate program be abandoned. However, from the information I have been able to obtain, there was unanimous agreement that, if abandoned, the rebate should be replaced by a price reduction that would allow wholesale distributors to sell to their dealers at a price competitive with Texaco and other major refiner direct served dealers. That was one of the problems with the rebate program when wholesale distributors were included in it. Contrary to Mr. Gunnels' statement during his oral testimony that the program operated "exactly like it did for retailers" (lines 2483-2484 & 2651-2652), the program differed in some areas of the country in that wholesale distributors:

(1) did not receive the additional 1.5¢ (retroactive to the first gallon purchased) when they reached 100% of their base period volumes; and

(2) were restricted in the amount of product they could buy under the rebate. This varied from 100% to 200% of base period volume.

These two differences put the distributor and his/her service station dealers at a disadvantage with the direct delivered service station dealer in some areas of the country. In addition to receiving the extra 1.5¢, the direct delivered dealer had the opportunity to increase his/her overall average rebate. For example, if a Texaco direct delivered dealer received 4¢ after reaching 50% of base period volume, another 1.5¢ retroactive to the first gallon after reaching 100% of base period volume, and he actually sold 200% of base period volume, the dealer would have received 4.5¢ a gallon rebate for every gallon sold during the month. A competing distributor in the same Texaco pricing zone, who did not receive the extra 1.5¢ and was restricted to 100% of base period volume could receive only a maximum of 2¢ a gallon rebate for every gallon sold during the month - a difference of 2.5¢ less than the direct dealer received!

With the above factors in mind, it is not difficult to ascertain why some distributors desired a price reduction instead of the rebate program. However, it is obvious that they did not ask for an adjustment that would render them competetively worse off than before. I believe the following letter from a former member of the Texaco Wholesaler Council documents this point.

(Insert enclosed letter from Mr. Arthur J. DeBlois, Jr.)

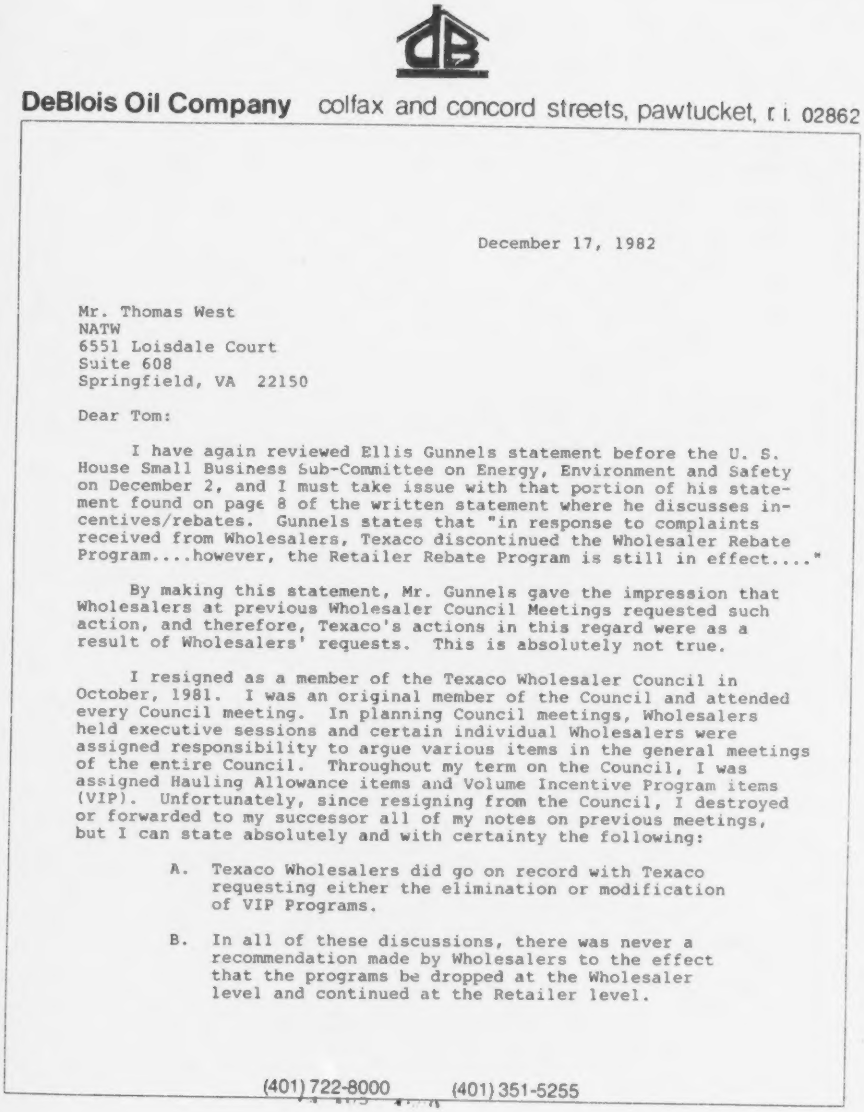
SUMMARY AND CONCLUSIONS

In summary, Texaco wholesale distributors are being restricted as to the areas they may market by Texaco's pricing tactics. Many of these distributors have spent a lifetime and their savings developing the market areas in which they are now being rendered non-competitive by these discriminatory pricing tactics.

If Texaco management does not wish to compete with these distributors in a fair and equitable manner, in areas where they decide to market directly, they should offer to buy the businesses of these distributors and pay the going price for, not only facilities and equipment owned by these small business men and women, but also for goodwill they have built up over the years they have been promoting Texaco's products.

Thomas F. West
Executive Director

Enclosures: NATW Survey Results
Letter, Arthur J. DeBlois, Jr., December 18, 1982



DeBlois Oil Company colfax and concord streets, pawtucket, r. i. 02862

December 17, 1982

Mr. Thomas West
NATW
6551 Loisdale Court
Suite 608
Springfield, VA 22150

Dear Tom:

I have again reviewed Ellis Gunnels statement before the U. S. House Small Business Sub-Committee on Energy, Environment and Safety on December 2, and I must take issue with that portion of his statement found on page 8 of the written statement where he discusses incentives/rebates. Gunnels states that "in response to complaints received from Wholesalers, Texaco discontinued the Wholesaler Rebate Program....however, the Retailer Rebate Program is still in effect...."

By making this statement, Mr. Gunnels gave the impression that Wholesalers at previous Wholesaler Council Meetings requested such action, and therefore, Texaco's actions in this regard were as a result of Wholesalers' requests. This is absolutely not true.

I resigned as a member of the Texaco Wholesaler Council in October, 1981. I was an original member of the Council and attended every Council meeting. In planning Council meetings, Wholesalers held executive sessions and certain individual Wholesalers were assigned responsibility to argue various items in the general meetings of the entire Council. Throughout my term on the Council, I was assigned Hauling Allowance items and Volume Incentive Program items (VIP). Unfortunately, since resigning from the Council, I destroyed or forwarded to my successor all of my notes on previous meetings, but I can state absolutely and with certainty the following:

A. Texaco Wholesalers did go on record with Texaco requesting either the elimination or modification of VIP Programs.

B. In all of these discussions, there was never a recommendation made by Wholesalers to the effect that the programs be dropped at the Wholesaler level and continued at the Retailer level.

I will not go into the reasons for these arguments as they are complicated and would take too much space. I will simply sum up by saying that the Wholesaler arguments given Texaco at the Council meetings are absolutely not reflected in Mr. Gunnels statement on page 8.

After Mr. Gunnels made his formal statement and during the questioning period, he did ease off on his written statement by stating something to the effect that the particular meeting discussing VIP programs was "hot and heavy", and that his written statement may not have accurately described the Wholesaler argument. I believe a careful examination of that question period will bear out the above.

Hoping that this is the information you require, I am

Sincerely,

Arthur J. DeBlois, Jr.

AJD,JR.:jm

PRICING SURVEY OCTOBER 19-25, 1982

Attached are results of a pricing survey conducted by NATW during the period October 19-25, 1982. The survey was taken as a result of the Texaco Marketing Department requesting proof of our allegation that Texaco wholesale distributors have been placed in a non-competitive position in the marketplace. Results were provided Texaco.

Thirty five Texaco distributors were surveyed. The twenty six shown in the attachment stated that the difference between their delivered price from Texaco and the competitive street prices (in some cases Texaco's own direct served stations) made it impossible for their dealers to market their product without losing money.

COMPARISON OF TEXACO WHOLESALER DELIVERED PRICE AT BULK PLANT

AND DEALER DIRECT POSTED STREET PRICES

Location of Wholesaler	Date	Terminal/ Wholesaler Price *	Competing Dealer Posted Street Price/Location
1. Orange, Virginia	10/20/82	Richmond, VA delivered to Orange, VA $1.142 Reg. (L)	Texaco-Hwy. 250 E, Orange, VA $1.179 Reg. Cash Exxon-Hwy. 250 E., Orange, VA $1.199 Reg. Cash Unbranded-Hwy. 250 E, Orange, VA $1.169 Reg. Cash
2. E. Stroudsburg, Pennsylvania	10/19/82	Allentown, PA delivered to E. Stroudsburg $ 1.1276 Reg. (L) (Frt. 2¢)	Exxon-E. Prospect St. & Brown, E. Stroudsburg, PA $1.14.9 Reg. Texaco-E. Stroudsburg, PA $1.159 Reg. Texaco-Allentown, PA $1.129 Reg.
3. Hackensack, New Jersey	10/19/82	Newark Barge to Hackensack $1.0903 Reg. (L)	Mobil- Schraalenberg Rd., Harrington Park, NJ $1.089 Reg.
4. Rensselear, Indiana	10/19/82	Speedway, Indianapolis, Ind. Term. delivered Lafayette, IN $1.122 Reg. (L)	Amoco-Lafayette, IN $1.109 Reg.
5. Medford, Oregon	10/19/82	Eugene, OR Term. delivered to Medford $1.0927 Reg. (L)	Texaco-Medford, OR $1.149 Reg.

* Includes all taxes & freight charges to location shown

	Location of Wholesaler	Date	Terminal/ Wholesaler Price *	Competing Dealer Posted Street Price/Location
6.	Knoxville, Tennessee	10/20/82	Knoxville Terminal $1.096 Reg. (L)	Texaco-Knoxville $1.119 Reg. (includes credit card) Gulf-Knoxville $1.139 Reg. (Includes credit card) Golden Gallon-$1.09 Reg. (Cash)
7.	Cambridge, Massachusetts	10/25/82	Chelsey, MA Terminal - delivered to Cambridge $1.0994 Reg. (L)	Texaco-Brighton Section Boston $1.169 Reg. (credit card or cash) CITGO-Cambridge $1.139 Reg. (cash) ARCO-Cambridge $1.139 Reg. (cash)
8.	Stuart, Florida	10/19/82	Port Everglades Term. - delivered to Stuart $1.098 Reg. (L)	Mobil-U.S. 1, Stuart $1.10 Reg. (cash) Shell - U.S. 1, Stuart $1.139 Reg. (credit card) CITGO-U.S. 1, Stuart $1.129 Reg.
9.	Winchester, Virginia	10/20/82	Fairfax Term. delivered to Winchester $1.1210 Reg. (L)	Texaco-Winchester, VA $1.159 Reg./Cash (same price credit) Shell-$1.159 Reg./Credit card ARCO-$1.159 Reg./Cash FISCA-$1.149 Reg./Cash
10.	Chicago, IL	10/20/82	Des Plaines Term. delivered to Chicago $1.105 Reg. .08 (cty tax at pump) $1.185 Reg. (L)	ARCO-Touhy & Cicero $1.121 Reg./Cash Standard-Near Touhy & Cicero $1.17 Reg./Cash Texaco-Near Touhy & Cicero $1.17 Reg/Cash CITGO-Near Touhy & Cicero $1.14 Reg.

* Includes all taxes & freight charges to location shown

	Location of Wholesaler	Date	Terminal/ Wholesaler Price *	Competing Dealer Posted Street Price/Location
1.	Milford, Virginia	10/20/82	Richmond Term. delivered to Milford $1.146 Reg. (L)	AMOCO-Rt. 207 & 995, Ruter Glen, VA $1.169 Reg./Cash
12.	Salisbury, Maryland	10/20/82	Salisbury $1.0855 Reg. (L)	ARCO-Salisbury-$1.109 Reg./Cash Texaco-Salisbury $1.129 Reg./Cash Exxon-Salisbury $1.11 Reg./Cash AMOCO-Salisbury $1.129 Reg./Cash
13.	West Point, Virginia	10/20/82	Richmond Term. - delivered to West Point $1.138 Reg. (L)	Texaco-Williamsburg, VA $1.159 Reg./Cash Crown-Williamsburg, VA $1.159 Reg. with credit card
14.	Richmond, Virginia	10/20/82	Richmond $1.133 Reg. (L)	Texaco-Hwy. 95 & Willis Rd., Ridge Road Shopping Cntr., Richmond $1.179 Reg.
15.	Laramie, Wyoming	10/20/82	Term. Unknown delivered to Laramie $1.129 Reg. (L)	Texaco-Cheyenne, WY $1.129 Reg. (this price 3 weeks old)
16.	San Antonio, Texas	10/20/82	Term. unknown delivered to San Antonio $1.0345 Reg. (L)	Texaco-Walzan Rd. and Nachidoces & Hwy. 410, San Antonio $1.05/$1.06 Reg.
17.	Montgomery, Alabama	10/21/82	Term. Unknown delivered to Montgomery $1.13825 Reg.(L)	Texaco-Montgomery, AL $1.20 Reg. (L)/Credit card
18.	Tampa Florida area	10/19/82	Tampa delivered $1.083 Reg. (L) ($1.065 incl. temp. corr.)	Texaco & others-Tampa, FL $1.089 Reg. (L)/Cash

* Includes all taxes & freight charges to location shown

	Location of Wholesaler	Date	Terminal/ Wholesaler Price *	Competing Dealer Posted Street Price/Location
19.	San Benito, Texas	10/21/82	Term. unknown delivered to Montgomery $1.0395 Reg. (L)	Texaco-Columbus, TX $1.059 Reg. (L)/Cash McAllen & Harlington, TX $1.089 Reg. (L)/Inc. credit card
20.	Atlanta, Georgia	10/21/82	Term. Unknown delivered to Atlanta - $1.12 Reg. (L) $1.16 Reg. (U/L)	Texaco-Atlanta, GA $1.13 Reg (L)/credit card $1.17 Reg.(U/L) credit card
21.	Plymouth, Massachusetts	10/21/82	Term. unknown delivered to Plymouth $1.111 Reg. (L) $1.151 Reg. (U/L)	AMOCO-Plymouth, MA $1.169 Reg.(L)/Cash $1.209 Reg.(U/L)/Cash Mobil-Plymouth, MA $1.17 Reg. (L)/credit card $1.25 Reg.(U/L)/credit card
22.	Worchester, Massachusetts	10/22/82	Providence Term. - delivered to Worchester $1.1121 Reg. (L)	Texaco-Arvin, MA $1.169 Reg.(L)/credit card Worchester (Southbridge St) $1.179 Reg.(L)/credit card Shrewsbury, MA $1.169 Reg.(L)/Credit card Worchester, MA, Old Colony (Bogelton St.) $1.139 Req.(L)/Cash
24.	Elloree/Orangeburg, South Carolina	10/22/82	Augusta, GA term. delivered to Elloree/Orangeburg $1.132 Reg.(L)	Chevron-Orangeburg, SC $1.149 Reg.(L)/Cash
25.	Gould, Arkansas	10/25/82	Term. Unknown delivered to Gould $1.173 Reg. (L)	Exxon & Gulf-Gould, AR $1.219 Reg. (L)/Cash
26.	LaPlace, Louisiana	10/25/82	Term. Unknown delivered to LaPlace $1.0657 Reg. (L)	Shell-LaPlace, LA $1.089 Reg.(L)/credit card

* Includes all taxes & freight charges to location shown

APPENDIX O.—ADDITIONAL INFORMATION SUBMITTED BY W. J. BITTLES, SHELL OIL CO.

Shell Oil Company

One Shell Plaza
P. O. Box 2463
Houston, Texas 77001

W. J. Bittles, Jr.
Vice President Retail Sales

February 11, 1983

The Honorable Berkley Bedell
United States House of Representatives
Committee on Small Business
Chairman of Subcommittee on General
Oversight and the Economy
R 363 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Bedell:

Again, I appreciated the opportunity to speak to your subcommittee in early December and look forward to a personal meeting to continue our discussions of the issues affecting small business when our schedules permit.

As to your inquiry about my prepared remarks located on page 8 of our internal copies, the information in question was taken from DOE statistics reflecting the fact that jobber business was expanding at nearly the same rate that dealer business was declining. The DOE Petroleum Market Shares report of September 1981, page 13, showed a comparison of gasoline sales over a period from 1972 to 1981 among large integrated refiners, branded jobbers and lessee dealers. During those nine years, integrated refiners' supplies to branded jobbers increased about 15% while supplies to branded lessee dealers declined about 13%.

Shell's sales of gasoline to its jobbers and dealers during this period are almost mirror images of industry's experience related above.

Thank you for your interest in our business and the opportunity to discuss the issues.

Sincerely,

Bill Bittles

WJB:JWP:DN

APPENDIX P.—STATEMENT SUBMITTED ON BEHALF OF GULF OIL CORP.

Gulf Oil Corporation

PUBLIC AFFAIRS DEPARTMENT

Kevin J. Riorden
SENIOR FEDERAL
RELATIONS REPRESENTATIVE

Suite 700
1025 Connecticut Ave., N. W.
Washington, D. C. 20036

December 10, 1982

The Honorable Berkley Bedell
Chairman of the House Small Business
Subcommittee on Energy, Environment and Safety Issues
Affecting Small Business
B 363 Rayburn House Office Building
Washington, D. C.

Re: Petroleum Marketing Oversight Hearings

Dear Mr. Bedell:

I enclose for the record Gulf Oil Corporation's view of present marketing conditions. Copies are being sent to the other members of your subcommittee as well.

Testimony at last week's hearings provided evidence that petroleum marketers are continuing to adjust to changes in the post-decontrol marketplace. Each competitor is seeking to deliver his products in the most efficient manner at prices the consumer is willing to pay. The methods of individual marketers vary, as one might expect in a time of keen competition, and one favorable consequence is that consumers are paying lower prices for petroleum products than they have in some time.

Please call me if you have any questions.

Cordially,

Kevin Riordan

Attachment

cc: Members of the House Small Business Subcommittee on Energy

TELEPHONE 202/659-8720

GULF OIL CORPORATION'S
STATEMENT ON
COMPETITION AND MARKETING PRACTICES IN THE POST DECONTROL MARKETPLACE

During the hearings on gasoline marketing practices since decontrol held by the Subcommittee on December 1 and 2, several perceived problems were raised by witnesses. Gulf Oil Corporation would like to respond for the record at this time regarding those issues.

It was alleged that major oil companies are seeking to eliminate branded dealers in order to facilitate development of company-operated stations by their control over rents, credit practices and pricing. There is no rationale to support the contention that major companies would benefit from eliminating their branded dealers. The dealer segment is essential to Gulf's marketing business and is one we intend to continue to use for marketing our products. Gulf's company-operated outlets have, in fact, decreased since decontrol in January 1981, from approximately 920 to 630 stations today. This represents a continuation of a trend in Gulf's operations since 1976, when the number of our co-op stations peaked at 1,323. We have changed in response to the changing marketplace in which we operate. Gulf has converted many co-op stations to dealer-leased stations since 1976, and would find conversion and operation of the vast majority of existing dealer-leased locations to be economically unsound. Currently, 30 percent of Gulf's gasoline sales are made through our dealers. We have no reason to attempt to eliminate them from the marketplace.

Other complaints voiced by witnesses included: more stringent credit terms, credit-card surcharges, reduced traditional margins and elimination of freight or hauler allowances. These policy changes are referred to as "predatory" and "unfair," when in fact they are reasoned and necessary business moves on the part of marketers in a highly competitive, shrinking market.

Our view is that the gasoline market is functioning in exactly the way a decontrolled free-market was intended to operate. It is, in fact, as competitive and fair a marketplace as could be expected, considering the short time it has been allowed to function following nearly eight years of federal controls.

Those eight years of price and allocation controls on petroleum marketers retarded the industry's ability to adapt to a changed marketplace. Since federal decontrol in January 1981, many of the changes made necessary by market realities have been instituted at an accelerated pace. Had controls never been imposed, many of these market adaptations would have occured over an extended period of time. Their impact is more severe today, not only because of their rapidity; but also because they are being instituted in a very tight competitive market which has steadily shrunk since 1978. However, these business policies have been made as an effort to remain viable and competitive in the face of changing consumer demands.

The consumer has clearly benefitted from decontrol. Prices, adjusted for inflation, have declined, although wages and operating costs for all marketers have risen. Motorists no longer need worry about the availability of fuel. They may choose their services and products from an increasing variety of sellers including self-service, full-service, mini-markets, etc. They may charge their purchases on a credit card, in many cases not even the card issued by the firm whose gasoline they choose to buy. They may pay cash for their purchase and in some cases receive a discount for paying cash. In fact, consumers today have more choices at lower prices than ever was possible prior to decontrol. The competitive market has performed as it was intended and the motoring public has benefitted from it.

Returning to a competitive marketplace has been difficult for many segments of the industry. Margins for oil marketers have been compressed. Long-standing marketing practices have been forced to measure up to the requirements of today's competitive environment, and in many cases have been found wanting. Compounding the problem of adjusting to competition has been the declining demand for motor fuels as a result of price increases and conservation. The depressed national economy has further dampened demand. To remain viable, all operators must act to minimize costs and maximize efficiency. Gulf has and will continue to act to maintain its delivery of a quality product at a reasonable price to its customers. At all times, Gulf's policy has been, and will remain, to operate strictly within the law.

Gulf believes that, in spite of the present difficulty the industry faces, today's marketplace is highly preferrable to the problems of controls and legislative attempts to limit competition. Intervention in the free marketplace has not worked in the past and will not work in the future. The legislative proposals put forth by some marketers are strictly protectionist measures, designed to limit or eliminate some types of competition, and to protect inefficient operations at the ultimate expense of the consumer and the nation.

APPENDIX Q.—LETTERS RECEIVED FROM INDIVIDUAL GASOLINE MARKETERS

December 6, 1982

Honorable Berkley Bedell
U. S. House of Representatives
Room 2440
Rayburn H. O. B.
Washington D. C.   22015

DEC 1 8

Dear Sir:

I understand that you are going to hold some hearings on the marketing practices of the Major Oil Companies.

I am sure you know our place of business. We are located 10 miles north of Storm Lake, Iowa. We are the Skelly/Getty truckstop at the Junction of Highways 3 & 71.

In the truckstop business the competition is from 100 to 300 miles away. At the present time Skelly/Getty is charging us 3% of the gross sales of Diesel Fuel sold on credit cards.

Skelly/Getty has a company operated station at Missouri Valley, Iowa. If we were to meet their price we would lose one cent a gallon on every gallon we sold on their credit card.

Champlin Oil Company has a company operated truckstop in LeMars, Iowa. It is 60 miles east of us. They are selling Diesel Fuel to the truckers for the same price their jobber and I pay for it in transport lots.

If this practice continues, the small business man is going to be priced out of business.

Any help you can give us will be greatly appreciated.

Thank You,

Howard Sabel

Howard Sabel
Storm Lake, Iowa   RR3
50588

LES AuCOIN
1ST DISTRICT, OREGON

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

December 2, 1982

The Honorable Berkley Bedell
Chairman
Subcommittee on Energy, Environment
and Safety Issues Affecting Small Business
B363 Rayburn House Office Building

Dear Berk:

I understand that you are holding oversight hearings to examine current conditions in the petroleum market since oil prices were decontrolled last year.

Mr. Frank J. Boresek, President of Franko Oil Company, has recently brought his concerns on this issue to my attention. As a small independent retailer of gasoline in Oregon, Mr. Boresek can provide insight into the impact that the activities of major oil companies, in light of a soft oil market, are having on independents marketers.

I would appreciate your taking his concerns into consideration and making his enclosed letter part of the hearing record.

Thank you for bringing this issue to the attention of the Subcommittee and I look forward to hearing from you.

With warm regards,

Sincerely,

-Les
LES AuCOIN
Member of Congress

LA:db
enclosure

2446 RAYBURN HOUSE OFFICE BUILDING, WASHINGTON, D.C. 20515 (202) 225-0855
1716 FEDERAL BUILDING, 1220 SW THIRD, PORTLAND, OREGON 97204 (503) 221-2901, OREGON TOLL FREE LINE 1-800-452-1920

OCT 29 [illegible]

F FRANKO COMPANIES

☐ FRANKO OIL COMPANY
☐ JONES TRANSPORTATION
☐ MID OIL COMPANY
☐ KEBEROS CORPORATION

October 26, 1982

The Hon. Les AuCoin
House of Representatives
Washington, D.C. 20515

Dear Mr. AuCoin:

This letter is written to you as a plea for your help and expertise. You simply cannot believe what is happening in the retail petroleum marketing business all across the United States today. The survival of thousands of small business, petroleum marketers is now at stake.

Since petroleum decontrol in January, 1981, the marketplace has become the scene of various, unfair business activities on the part of major oil company refiner-suppliers. These actions are nothing short of predatory in nature to independent marketers such as ourselves.

First, the major oil companies are trying to eliminate their own, branded, Jobber-marketers; and, second, there appears to exist a concerted effort on the part of the largest major oil companies to substantially reduce or eliminate the market share presently held by independent marketers like Franko.

For example, you will find wide-ranging price discrimination that favors major oil company refiner-supplied, dealer service stations compared to wholesale Jobbers of the same brand. A case in point: Atlantic Richfield (ARCO) is now and has been offering to their direct supplied dealers a so-called Competitive Allowance totaling as much as 6¢ to 8¢ per gallon below the posted, dealer tankwagon price; while the price to their own wholesale Jobbers remains at the tankwagon price. This situation applies to Franko because we have unbranded contracts.

The result of this activity is that the wholesale Jobber and the unbranded contract customers are faced with wholesale costs that are three to five cents more per gallon than the direct supplied stations are selling at retail on the street. If it were possible,

☐ P.O. DRAWER 2440 ☐ EUGENE, OREGON 97402 ☐ TELEPHONE (503) 687-9200 ☐

Franko could actually save money by filling its transport trucks from these retail pumps!

In addition to this tremendous price break, the direct supplied stations are continuing to receive unlimited quantities of gasoline while the branded wholesaler and the unbranded contract customers are being held to 70% of their contract gallons. It's a double-whammy: artificially high prices aggravated by unnecessary low volumes! And furthermore, if contract volumes are not purchased, the very contract itself will be terminated.

This kind of "competitive" practice must be stopped.

Although I have used "ARCO" as an example here, the same basic policies apply to most of the so-called major oil companies (Shell-Texaco-Mobil-etc.).

Franko Oil Company is one of the largest, independent retail marketers of gasoline in the Pacific Northwest. Our volume today is only 50% of what it was a year ago and this is taking into consideration that there is less overall consumption in 1982 compared to 1981. This drastic loss in sales is solely the result of unfair marketing practices by these large, major oil companies and their ploy to run the branded, wholesale Jobber and the independent marketer out of existance!

Franko Oil Company remains as a locally owned and operated retailer only; we are not a vertically-integrated, multi-national corporation with many opportunities to make profits or generate losses at varying degrees and at different levels in the chain that goes from the crude oil in the ground to the fuel tank in your motor vehicle.

We are not asking for a subsidy, a hand-out, or relief. We simply wish to continue to have an opportunity to compete in the marketplace on a fair and equitable basis. Can General Motors open a retail, automotive dealership, manned by company-salaried employees to compete in direct sales against their 'franchise' dealers? Then why should Mobil?

Would you suggest a lawsuit? Franko is far too small an operation to adequately defend itself against these industry giants. Besides, this type of litigation would be so time consuming, resource draining, and lengthy (by its nature) that our very existance would have long since terminated before a court solution could be obtained. Without your immediate help and assistance, we are left at the mercy of the ARCOs of this world.

Therefore, we desperately need your support and quick action to save our future in the marketplace. I am asking for your endorsement of a divorcement bill or other legislation which is urgently needed to stop the majors from their anti-competitive marketing practices.

We recognize that this is a large and complex subject but it does need a much wider discussion and investigation, leading to some corrective and positive actions, and at the very earliest possible time. Past Federal legislation has frequently stated the will of the people in insisting that, when and where necessary, agencies of the Government must act to ensure the survival of the independent retail marketer. Just such a time and place are now at hand.

I would appreciate hearing your opinion or views on this very important matter.

Sincerely,

Frank J. Boresek

Frank J. Boresek
President
FRANKO OIL COMPANY

FJB:kc

cc: District Office
1716 Federal Building
1220 S.W. 3rd
Portland, OR 97204

Gas 'n' Go, Inc.
Gasoline, Oil Distributors
13435 Interurban Avenue South • Tukwila, Washington 98188 • (206) 243-1103

Representative Berkley Bedell
Room 2440
Rayburn Office Building
Washington D.C., 20510

October 6, 1982

Dear Representative Bedell,

We are an independent gasoline jobber in the greater Seattle area and have been in business since 1968. We have grown to nine stations, forty five to fifty employees, and sell about three quarters of a million gallons a month. But we, and many others like us, are in serious trouble. The major oil companies, our suppliers, seem intent on destroying competition and forcing the small independent marketer out of business.

Our supplier is Atlantic Richfield. Recently ARCO and other major suppliers have implemented programs that make it impossible for non-company operated dealers to survive. Direct supplied dealers can buy gasoline at prices lower than jobbers' prices. Jobbers are restricted to minimum contract volumes- direct supplied dealers have no volume limits. Credit terms have been shortened from as much as thirty days down to as little as twenty four hours.

We believe these policies constitute unfair, discriminatory, and devastating business practices. They are an attempt by ARCO to eliminate all but direct supplied dealers from the maketplace. It is the continuation of a 1973 policy that was restricted by Federal controls. Those controls have now been removed and the elimination program has begun in earnest.

Other jobbers feel as we do and have protested to their suppliers and filed suits in efforts to stop the majors' unfair practices. (See copies of articles from U.S. Oil Weekly enclosed.)

I have also enclosed copies of letters to us from ARCO. All three show a progressive deterioration of the major-independent relationship. The first letter (March 13, 1972) notified us of the termination of our "re-brand" agreement but allowed us to continue purchasing products. The May 3, 1973 letter discontinues the allowance given us for hauling products in our tank truck. The September 17, 1982 letter drastically reduces credit terms and shows a marked change in attitude. The early letters were personally addressed and cordial; the latest is a blunt, impersonal, demanding form letter.

I do not understand this change in policy. Independent jobbers own their own properties, usually own their own tank trucks, carry their own credit, and service their own customers. Yet ARCO, and the other majors, allow the independent no compensation for that. In fact, they often pay as much or more for products than company supplied dealers.

We have urged Senators Henry Jackson and Slade Gorton to join you and Senator Alan Dixon in delving into this serious problem and stop this program before it does irreparable harm to independent marketers across the nation. If it is not curbed soon it will destroy the competitive balance in the marketplace and will surely lead to soaring energy costs for all Americans. There is little time for delay.

Sincerely,

Grant C. Maurer,
President

The Lincoln sales rep will evaluate the proposed quick lube site and assess its equipment needs, at no cost, Orisek says.

For more information on American Quick-Lube Systems, contact Grease Monkey at the address listed on page 2, top right column.

For information on Concept Communications Co., contact Rudy Orisek, Concept Communications Co., 270 Shore Dr., Burr Ridge, Ill. 60521. Phone: 312-920-8989.

Lincoln St. Louis is at 4010 Goodfellow Blvd., St. Louis, Mo. 63120. Ask for Steve Bucol. Phone: 314-383-5900. ■

Contests...

"Majors haven't shown interest in games for 10 years and suddenly, for the first time, they're taking notice," says Lou Gerber, an exec with Glendinning, a Westport, Conn. company that set up many promotional games for oil companies in the 1960s. Glendinning designed the new Shell contest.

Growing interest in promotional contests that award cash or prizes to customers is evidence of changing marketing strategies by majors. The "soft-sell," goodwill-building type of advertising that prevailed in the 1970s seems to be out.

In today's low-margin, highly competitive market, the hard-sell prevails. Contests are just one facet of that marketing strategy; another is merchandise giveaways, which several majors have tried in recent months. For example, Sun last week began giving away disposable Gillette razors to customers (OW 9/27).

Canada may be an indication of what might be in store for gasoline marketing in the U.S. Gulf Canada is engaged in what it describes as a "coupon war" in Quebec with competing refiners. Gulf customers get a $1 coupon that can be used on purchases at a large grocery store chain. In return, the grocery chain gives $1 coupons for Gulf products.

A Gulf spokesman says Imperial Oil of Canada started the coupon promotion tactic. Texaco, while not promoting coupons, say it will redeem Gulf or Imperial coupons for purchases at Texaco stations.

C-stores also seem to be shifting marketing tactics. Sunshine Jr., a Panama City, Fla.-based C-store chain with 300 stores and gasoline outlets, recently ran a traffic-building game in 100 stores. Sales increased 20% at some stores. ■

ARCO jobbers win round in lawsuit

West Coast ARCO jobbers last week won a preliminary injunction barring ARCO from taking actions allegedly intended to put some jobbers out of business.

California state court judge John Cole issued the preliminary injunction after a group of ARCO marketers told the court that ARCO was violating state franchise laws.

ARCO now has five days to appeal the injunction before it goes into effect.

California ARCO Distributors Inc. (CADI), a non-profit group of ARCO jobbers formed to fight ARCO, filed the suit after ARCO cut jobber hauling allowances, imposed allocations on wholesalers and tightened jobber credit terms (OW 9/13).

As part of their court submission, the marketers produced an internal ARCO document showing that ARCO secretly planned to eliminate consignees in 1973. The jobbers contended ARCO's recent terminations of wholesalers were a continuation of that plan.

Judge Cole found that ARCO had made a deliberate attempt to eliminate wholesalers and had engaged in unfair business practices, citing cuts in jobber margins, removal of hauling allowances, tighter credit terms and allocations.

Cole said introducing such changes halfway through a jobber's contract constituted unfair business practices.

The preliminary injunction orders ARCO to reinstate hauling allowances and to ease credit terms, says CADI's lawyer. ■

Competition forces Chevron to offer cash discounts

Chevron has decided to push cash discounts because it's losing business.

The company announced last week that, beginning Nov. 1, it will assess a 3% credit card processing fee and will urge its dealers and jobbers to offset the fee by offering discounts to cash-paying customers.

About the time the 3% fee goes into effect, Chevron said, it will cut dealer and jobber prices as much as 2¢/gal.

What prompted Chevron to act on credit cards? "We're doing this so we can compete in the marketplace," said one Chevron official. "When volumes are basically static, you have to be competitive or you'll lose your proverbial behind if you don't do something."

Chevron officials admit the company has lost .25% of its national market share in the last six months, but other oil industry experts say the market share loss may be higher.

According to oil analyst Dan Lundberg, Chevron made 16% of all retail gasoline sales in California during July, down from 18% in January, 1981.

After months of internal debate, Chevron decided to use cash discounts because other majors' cash discounts were taking away business, especially on the West Coast where Chevron's prices are among the highest, sources say.

Earlier this year (OW 4/26), Chevron chairman George Keller said the company was considering charging customers an annual fee for using the credit card. Other oil companies discovered through market research that many customers would have dropped their credit cards if forced to pay annual fees and that may have been the reason Chevron chose not to try it. ■

Report explains why majors won't supply independents

The eight largest majors have consistently refused to supply gasoline to independent marketers because they fear competition from the private branders, a new Federal Trade Commission (FTC) study says.

Majors believe their branded gasoline marketing strategies are vulnerable to private brander competition if independents can easily get wholesale gasoline supplies, the FTC said.

The FTC study, released last week, reviewed oil industry acquisitions over the past 12 years and concluded that petroleum product prices and supplies haven't been hurt by oil industry mergers.

The 298-page study, done at the request of congressional leaders, discusses the impact oil industry mergers have had on marketing and cites a number of major oil company documents that the FTC obtained.

Some documents reveal that majors were concerned about selling gasoline to unbranded marketers. For example, one oil company document cited in the report says: "Any and all requests for unbranded gasoline supply to be flatly refused, with no compromise." Another document notes: "Independents usually do not call us, probably because we are not known as a supplier for them. Our objective is to keep it that way."

"Because direct supplies to unbranded independents are apparently not available in any substantial quantity from the eight largest refiners, the competitive consequences of the acquisition by a major of any other refiner which sells a large amount of gasoline to the price-oriented private branders should be examined," the FTC report said.

That was an FTC concern in the proposed Marathon-Mobil merger last year.

The report notes that majors appear weakest in areas such as the Midwest and Rocky Mountains where independents have obtained the largest market shares. As a result, some majors have pulled out of those areas, preferring to consolidate in other areas where their market share is stronger.

The FTC says majors' retail prices are competitive with each other, but notes that independents and private branders have traditionally induced price competition in various markets.

"This factor is acknowledged in internal company documents. One company noted: 'The major problem has been the private branders — they have not gone along with price restorations except temporarily,'" according to the FTC report. ■

SIGMA plays hardball with majors on Capitol Hill

The Society of Independent Gasoline Marketers of America (SIGMA) is launching a congressional lobbying campaign to eliminate "anticompetitive practices" by majors.

SIGMA, representing about 300 of the nation's unbranded chain retailers, will urge Congress to strip majors of a variety of tax breaks that allow them to undercut unbranded competitors, says Ken Doyle, SIGMA exec.

Doyle says tax breaks that majors receive from crude oil production are being used to subsidize retail marketing, making "marketing efficiencies" of SIGMA members "irrelevant." Some majors are retailing at prices below independents' wholesale costs, he claims.

SIGMA also is "considering" supporting crude oil divestiture legislation, possibly coupled with marketing divorcement and retail divestiture.

Doyle stresses SIGMA isn't "saber-rattling" and says the group plans to pursue its legislative goals.

SIGMA's announcement is the latest volley in an escalating "war" between majors and marketers. The National Oil Jobbers Council (NOJC) has asked Congress to investigate majors' marketing practices (OW 8/23) and has hinted that it might seek divorcement legislation. Several state jobber associations also have voiced support for divorcement.

Marketers' complaints about majors' marketing practices are getting some attention on Capitol Hill. Rep. Berkley Bedell, D-Iowa, chairman of a House small business subcommittee, plans to hold hearings on gasoline marketing later this year (OW 7/19).

And another member of Congress is getting into the act. Sen. Alan Dixon, D-Ill., plans to hold hearings on gasoline marketing later this month in Chicago.

Marketers already have achieved one legislative victory in Congress. The Independent Gasoline Marketers Council (IGMC), representing about 30 of the nation's largest chain retailers, recently led a successful lobbying campaign for a measure stripping several majors of tax breaks on Alaskan crude oil (OW 8/16, 5/24).

The measure was included in the big tax bill that recently was signed into law by President Reagan. ■

Most Texaco jobbers want curbs on majors' marketing

Jobbers are doing a rapid about-face on refiner divorcement and divestiture.

Last year, a survey of Texaco jobbers showed overwhelming opposition to refiner divorcement, which would outlaw refiner-operated stations. But a recent poll of the same jobbers by the National Assn. of Texaco Wholesalers (NATW) **shows a whopping 87% of those polled now favor refiner divorcement.**

A clear-cut majority (70%) of several hundred Texaco jobbers surveyed supported divestiture, which would force majors out of marketing altogether. NATW says more than 60% of its 414 members responded to the survey.

The survey results reflect the increasing antagonism between marketers and majors. (See related story above.)

NATW will turn over the survey results to House and

(Continued on page 5)

Senate small business committees in hopes of focusing congressional attention on what jobbers say are majors' damaging marketing practices.

By a four-to-one margin, the surveyed Texaco jobbers said their major concern was Texaco's pricing policy. The jobbers said direct-supplied dealers can buy gasoline at prices equal to, or lower than, jobber prices.

Texaco jobbers' second-ranking concern is unequal allocations. Texaco has held jobbers to contract maximums but is giving direct-supplied dealers as much as they want.

SAME AS ARCO

Third on the jobbers' gripe list was Texaco's 3% credit card fee, followed by Texaco's new origin-pricing system that eliminates hauling allowances.

Jobbers also are complaining that Texaco's salaried stations are retailing below jobbers' wholesale costs and that Texaco is offering to supply jobbers' dealer stations at prices that jobbers can't meet. ■

New Crown C-stores go up in just a few hours

Crown Central has found a way to add C-stores to existing stations with a minimum of business disruption caused by construction.

The solution: Build a prefabricated C-store that can be erected at the station within a few hours.

In March, Crown installed the first of its two-piece modular C-stores at a station in Atlanta. Since then, Crown has added the mini C-stores at two more Atlanta stations, says Antonius de Lange, Crown's real estate and operations manager.

The modular units, manufactured by Trans 10 Technologies, Inc. of Cincinnati, come completely prefabricated and are equipped with all exterior and interior fixtures, including the counter area, shelving, cigarette racks, hot water and heating/cooling systems, lighting, deposit safes and refrigeration equipment.

Once unloaded from the truck, the two pieces simply slide together on the center island against the two center canopy columns. (See photos below.) **The entire process of unloading and installing the sections takes only about two hours, de Lange said.**

Another 24 hours is required to make all the electrical, plumbing and heating connections and to install the floor tile and the decorative exterior brick. Along with the week or so of construction time needed to widen the center island to accommodate the structure and the day or two it takes to stock it, de Lange said, **the C-store can be installed and operating in two weeks.**

The units, called Express Marts, are constructed of steel, with triple-insulated, bullet-resistant glass at the operating-end and a pass-through drawer for serving customers late at night. The external steel surfaces are clad in aluminum, as is most of the interior and the floor of the 12-foot, five-door cooler.

The size of the units can be varied to fit an individual location. The prototype is approximately 12 feet wide, 30 feet long and 10 feet high, de Lange said. The station's center island, which originally measures 14 feet, must be widened four or five feet to accommodate the C-store.

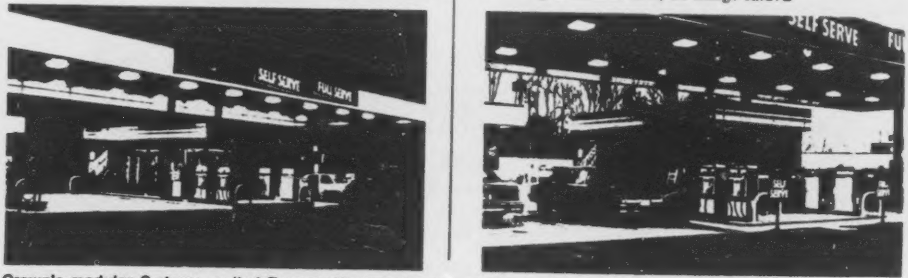
The relatively small size of the Express Mart unit limits the selection of products it can stock. The three in operation currently carry tobacco products, candy, snack items, coffee, dairy products, soft drinks, beer, baked goods and a limited variety of groceries.

"We're very pleased with the three units we have now," de Lange said. "Three additional locations are now scheduled for similar units and three more are on the drawing board."

In total, Crown plans to add Express Marts to 50 stations throughout its marketing system. The Baltimore-based refiner and marketer operates 213 branded outlets in nine states, from Long Island, N.Y. to Alabama.

"Wherever possible, all newly developed service station sites will also include a C-store," de Lange added. "But these will be completed one-piece units, because the sites will have been designed to accept this type of unit in advance."

The modular C-stores' cost is comparable to a building of similar size, de Lange said. ■



Crown's modular C-stores, called Express Mart, arrive at a station in two prefabricated sections that slide together against the two center canopy columns. The prefabricated structure comes equipped with all fixtures, including counter, shelves and a five-door refrigerator that runs the length of the back wall. The stores can be erected in a few hours. Crown plans to build about 50 Express Marts at existing stations.

March 13, 1972

Mr. Grant C. Maurer
Grant C. Maurer, Inc.
4302 S.W. Cloverdale
Seattle, Washington 98116

Dear Mr. Maurer:

It is with deep personal regret I am notifying you that Atlantic Richfield is withdrawing from the sale of Rocket products. Our decision was made after completion of an evaluation of market conditions and our sales of Rocket products. Included in our evaluation were distributor comments concerning current market conditions and future potential for such sales.

Please be advised that pursuant to Paragraph 2 of your Distributor Agreement, notice is hereby given that your Agreement will be terminated December 31, 1974, and that thereafter no Rocket products will be available for sale to you. In the interim, you may continue to purchase Rocket products under the terms and conditions of your Distributor Agreement.

Should you have any questions, please contact me.

Yours very truly,

ATLANTIC RICHFIELD COMPANY

G. J. Dunne

cRichfieldCompany

Products Division
515 South Flower Street
Mailing Address: Box 2679 - T.A.
Los Angeles, California 90051
Telephone 213 486 3511

May 3, 1973

Gas

Grant C. Maurer Inc.
4302 S. W. Cloverdale
Seattle, Washington 98116

Dear Mr. Maurer:

Reference is made to our Distributor Agreement, and all amendments thereto, under the terms of which we are furnishing your requirements of Petroleum Products.

Particular reference is made to your prices covering gasolines. Confirming verbal advice on May 3, 1973, this is to notify you that effective May 4, 1973 we wish to cancel all prior prices and in lieu thereof new prices for gasolines will be F.O. B. our Terminal Seattle, Washington as follows:

Rocket 100 Gasoline	$.167 per gallon
Rocket Hi Action Gasoline	$.142 per gallon

These prices are exclusive of all taxes, to which current, new or increased taxes will be added.

Also effective May 4, 1973 we are cancelling our hauling letter as pertains to gasolines only, wherein you were authorized to haul gasolines and stove oil in your equipment from our Seattle, Washington Terminal. Regarding your hauling of stove oil from our Seattle, Washington Terminal you will still receive your discount provided for this product.

All other terms and conditions of our Distributor Agreement and Amendments thereto shall remain in effect.

Please indicate your approval and acceptance hereof in the place herein provided and return one copy for our file.

Very truly yours,

ATLANTIC RICHFIELD COMPANY

By J M Rogers

J. F. ROGERS, Manager, Pricing
Comm'l & Distr. Mktg. - West

Approved and Accepted
GRANT C. MAURER INC.

By A. Maurer (Pres.)

AFB:js

ARCO Petroleum Products Company
400 South El Camino Real
Mailing Address: Box 5811
San Mateo, California 94402
Telephone 415 340 6661

September 17, 1982

Dear Reseller:

Atlantic Richfield Company's prevailing credit terms for your class of trade are "C.O.D." with a provision that you may pay "on receipt of invoice" if you have made acceptable security arrangements.

For those of you who lift product from a supply point that is equipped with Automated Point of Sale (APOS), "receipt of invoice" is measured from the time of lifting because the invoice is available to you at that time even if you elect to have it issued later. For those who lift product at terminals not so equipped invoices are forwarded by mail or other means of delivery.

At the present time, Atlantic Richfield Company considers payment as being with prevailing credit terms if, within two (2) business days after you receive an invoice, your payment is made directly at the supply point during normal business operating hours, or it is made by U. S. mail (first-class postage prepaid) at the address furnished you by Atlantic Richfield and received by Atlantic Richfield within the customary mail time. Payments not made in this manner are regarded by Atlantic Richfield as past due, and shall result in your account being placed on C.O.D., certified check, if not already applicable; thereafter, at Atlantic Richfield's option product supply may be suspended or a default notice may be served on you providing for termination of your supply agreement if the indebtedness is not paid in full. Multiple defaults, even though cured individually, may also be grounds for termination.

If you have any questions concerning this announcement, please contact your ARCO Marketing representative.

Very truly yours,

ARCO PETROLEUM PRODUCTS COMPANY
A Division of Atlantic Richfield Company

T. E. Jones
Manager, Western Zone

TEJ:tm

APPC-7066
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Spark Oil Company, Inc.
5800 S. Eastern Ave., Suite 320
City of Commerce, California 90040
Phone (213) 728-0201

December 23, 1982

Berkley Bedell
Chairman
Committee on Small Business
B-363 Rayburn H.O.B.
Washington, D.C. 20515

Dear Mr. Bedell:

I enclose additional testimony to the recent Small Business Committee hearings on gasoline marketing.

Arco has imposed motor gasoline volume restrictions on their wholesale class of trade and simultaneously provide their retail dealers with requirements.

Arco's reasoning is that if distributors were allowed to buy requirements, Arco would not have enough motor gasoline to supply their direct customers. This is a convenient excuse of Arco and a further indication that they want to eliminate their distributors. If their excuse was valid, they would strive to provide for distributors in some other manner to offset this inequity.

Rather than give distributors any consideration, they also cut their gross margin by approximately 50% and imposed onerous credit restrictions. There is not a more effective way for them to announce that they do not want distributors. At the same time, they do want their distributors customers. They have taken over distributors customers directly and also indirectly.

Before our litigation in California, the distributors provided Arco with ample opportunity to discuss and remedy these inequities. Arco simply turned a deaf ear. One Arco executive has stated that the distributors will not be around for the next contract term.

In California the branded Arco distributors have received a temporary injunction against Arco requiring Arco to reinstate credit terms and restore part of the distributors lost margins. George Babikan, Arco's senior marketing vice president stated at small business sub-committee hearings in Washington, D.C. that this case was frivolous. A panel of judges unanimously disagreed.

Continued

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Distributors for major oil companies need some form of legislative protection, since major oil companies refuse communication and negotiation.

Respectfully yours,

Jack R. Findlay

Jack R. Findlay
President

cc: Taylor & Stauffer
cc: Shapiro, Laufer, Posell & Close
cc: C.A.D.I. Board of Directors

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